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Friday
August 16, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Environmental Protection Agency

Animal Drugs
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Aviation Safety
Federal Aviation Administration

Bilingual Education
Education Department

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Copyright Office, Library of Congress

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Elementary and Secondary Education
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Government Procurement
Agency for International Development

Grant Programs—Education
Education Department

Hazardous Materials Transportation
Coast Guard

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Selected Subjects

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Loan Programs—Transportation
Maritime Administration

Marketing Agreements
Agricultural Marketing Service

Medical Devices
Food and Drug Administration

Medicare
Health Care Financing Administration

Medicare and Medicaid
Health Care Financing Administration
Social Security Administration

Military Personnel
Army Department

Milk Marketing Orders
Agricultural Marketing Service

Postal Service
Postal Service

Radio
Federal Communications Commission

Trade Practices
Federal Trade Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: September 6 and 27; at 9 am (identical sessions).

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call Martin Franks, Workshop Coordinator, 202-523-5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington starting in November. The January 1986 workshop will include facilities for the hearing impaired. Dates will be announced later.

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Presidential Documents

Title 3—

The President

Proclamation 5361 of August 13, 1985

Polish American Heritage Month, 1985

By the President of the United States of America

A Proclamation

The history of Polish Americans is an inspiring part of our Nation's heritage. The first massive wave of Polish immigrants came to America to flee the political and economic oppression thrust upon their homeland by the 19th century imperial powers of Eastern and Central Europe. While they came with few material possessions, they brought something much more important—a deep faith in God and a determination to succeed in this land of opportunity. And succeed they did. They established churches, schools, and fraternal benefit societies. They worked hard in the mines, steel mills, and stockyards. They understood the importance of education, so that today, the children and grandchildren of the first immigrants can be found in America's leading businesses and educational institutions.

Americans of Polish descent have made, and continue to make, enormous contributions to the culture, economy, and democratic political system of the United States. The names of Tadeusz Kosciuszko and Kazimierz Pulaski, heroes of the American Revolution, have left a lasting imprint upon our history. Highways, bridges, and towns dedicated to the preservation of their memory dot our countryside. In the future, other public facilities and institutions will be named for today's prominent Polish Americans, such as those serving our Nation in the Executive branch, in Congress, the armed services, and in state capitols and city halls from coast to coast.

The dedication of Polish Americans from all walks of life to the ideals of freedom and independence, which Kosciuszko and Pulaski fought for in America and in Poland, and which their worthy successors within the Solidarity movement are struggling for in Poland today, serves as a model for all Americans. That struggle remains alive today and two Polish leaders of international stature—Pope John Paul II and and Lech Walesa—provide inspiring examples of moral leadership for us all.

The Congress, by House Joint Resolution 106, has designated August 1985 as "Polish American Heritage Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 1985 as Polish American Heritage Month. I urge all Americans to join their fellow citizens of Polish descent in observance of this month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of August, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-19617
Filed 8-15-85; 11:13 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5362 of August 13, 1985

National Neighborhood Crime Watch Day, 1985

By the President of the United States of America

A Proclamation

A Nation promising justice for all must ensure that its citizens are free from fear of crime in their homes and on the streets. Yet crime continues to be a substantial problem for American society. Twenty-three million households were touched by crime in 1984 and felt, in varying degrees, the pain, economic loss, sense of violation, and frustration that accompany crime victimization.

Fewer households were victims of crime in 1984 than in any of the previous nine years, due in part to greater public awareness and understanding of crime. This Administration is committed to increasing that awareness and understanding, thereby assisting in our Nation's effort to combat crime.

We recognize the effectiveness and the growth of local crime watch organizations throughout the country and the major role they have played in turning the tide against crime. By working together and in cooperation with their local law enforcement agencies, citizens have always been one of our most effective deterrents against crime. Such citizen action reaffirms those values of community, respect for the law, and individual responsibility that are so much a part of our national heritage.

It is important that all of the citizens of this Nation are aware of the significance of community crime prevention programs and the valuable impact that their participation can have on reducing crime in their neighborhoods. A "National Night Out" campaign will be conducted on August 13, 1985 to call attention to the importance of community crime prevention programs. All Americans will be urged to spend the hour between 8–9 p.m. on that evening on their lawns, porches, and steps in front of their homes to signify that neighbors looking out for one another is the most effective form of crime prevention.

Participation in this nationwide event also will demonstrate the value and effectiveness of police and community working together in a partnership on crime prevention. It will generate support for, and participation in, local crime watch programs; strengthen neighborhood spirit in the anticrime effort; and send a message to criminals that neighborhoods across America are organized and watching. This is a unique effort to remind the American people of the crucial role they can play in making their streets and neighborhoods safer. Strong, safe communities don't just happen. They are built by people who care and volunteer their time and energy to make the community a good place to live.

The Congress, by Senate Joint Resolution 168, has designated August 13, 1985, as "National Neighborhood Crime Watch Day" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 13, 1985, as National Neighborhood Crime Watch Day. I call upon the people of the United States to spend the period from 8 to 9 o'clock p.m. that day with their neighbors in front of their homes to demonstrate the importance and effectiveness of community participation in crime prevention efforts.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of August, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-19818
Filed 8-15-85; 11:14 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

Grade and Size Requirements for Limited Use Olives; Olives Grown in California

AGENCY: Agricultural Marketing Service, USDA.
ACTION: Final rule.

SUMMARY: This rule extends until July 31, 1986, the current grade and size requirements for processed olives which are used in the production of limited use styles olives (such as, halved, segmented, sliced, or chopped canned ripe olives). This action affords handlers the opportunity to market larger quantities of olives and permits the use of olives too small to be desirable for use as whole (pitted or unpitted) ripe olives to be utilized in the production of other styles of olives. This action will benefit olive producers and consumers.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of California olives for the benefit of producers and consumers and will not substantially affect costs for those handlers directly regulated.

This regulation is issued under the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), regulating the handling of olives grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the California Olive Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

Section 932.52(a)(3) provides that use of processed olives smaller than the sizes prescribed for whole and pitted styles may be established annually for limited use and the subparagraph further provides that such minimum sizes may also include a size tolerance as recommended by the committee and approved by the Secretary. Therefore, this action approves the establishment of minimum sizes contained in § 932.52(a)(3) for olives from the 1985-86 crop. These requirements are the same as those established for the 1984-85 crop year.

This action was recommended at a public meeting at which all present could state their views. It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) There is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to affectuate the declared policy of the act; (2) handlers are aware of this action as proposed by the California Olive Committee; and (3) compliance with this regulation will require no special preparation by handlers because this regulation is the same as the one currently in effect.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, California, Olives.

PART 932—[AMENDED]

1. The authority citation for 7 CFR Part 932 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of Grade and Size Requirements for Processed 1985-86 Crop Year Olives for Limited Use.

(a) *Grade.* On and after August 1, 1985, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1985, and meet the grade requirements specified in § 932.52(a)(1) as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1985, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1985 through July 31, 1986, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1985 or after July 31, 1986.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh 1/90 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/90 pound;

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/140 pound;

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh 1/150 pound: *Provided,* That not to exceed 20 percent of the olives in any lot or sublot may be smaller than 1/150 pound;

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 20 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

Dated: August 13, 1985.

Thomas R. Clark,

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

[FR Doc. 85-19614 Filed 8-15-85; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Parts 1032 and 1050

Milk in the Southern Illinois and Central Illinois Marketing Areas; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends certain diversion provisions of the Southern Illinois and Central Illinois orders that relate to how much milk may be moved directly from farms to nonpool plants and still be priced under the orders. The action removes the limits on such movements of milk under each of the orders during August 1985. The suspension was requested by Prairie Farms Dairy, Inc., a cooperative association that represents producers who supply each of the markets. The action is necessary to assure the efficient disposition of an increasing supply of milk by producers who have regularly supplied the fluid milk needs of the respective markets.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Suspension: Issued July 18, 1985; published July 24, 1985 (50 FR 30203).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the orders on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the orders and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the orders regulating the handling of milk in the Southern Illinois and Central Illinois marketing areas.

Notice of proposed rulemaking was published in the **Federal Register** on July 24, 1985 (50 FR 30203) concerning a proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the month of August 1985 the following provisions of the orders do not tend to effectuate the declared policy of the Act:

1. In 7 CFR Part 1032 (Southern Illinois) in § 1032.13(b)(2), the words "on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

2. In 7 CFR Part 1050 (Central Illinois):

a. In § 1050.13(d)(1), the words "During May, June and July".

b. In § 1050.13, paragraphs (d) (2), (3), (4), and (5).

Statement of Consideration

The action removes the limits on the amount of milk that may be moved directly from farms to nonpool plants and still be priced under the Southern Illinois and Central Illinois orders during August 1985. During August, such movements of milk to nonpool plants under the Southern Illinois order are limited to not more than 12 days' production of a producer. Under the Central Illinois order, diversions to nonpool plants may not exceed the number of days of production that is received at pool plants, provided that the total quantity of producer milk diverted does not exceed 35 percent of the amount of milk physically received at pool plants.

The suspension was requested by Prairie Farms Dairy, Inc., a cooperative association that supplies milk to handlers regulated under each of the orders. The cooperative association indicates that milk production under both orders is significantly above year earlier levels and that a greater proportion of the available milk supplies will have to be shipped to manufacturing plants than can be accommodated under the current diversion provisions of the orders. Thus, the cooperative contends that, in the absence of a suspension action, costly and inefficient movements of milk would have to be made solely for the purpose of pooling the milk of dairy farmers who have supplied the fluid milk needs of the respective markets.

No comments in opposition to the proposed action were received. However, two cooperative associations that represent producers who supply handlers regulated under the Southern Illinois order supported the suspension action for that order. Both cooperative associations (Mid-America Dairymen, Inc., and Land O'Lakes, Inc.) supported the suspension to facilitate the efficient disposition of the available supply of producer milk.

Milk production is significantly above year-earlier levels and consequently, a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. For example, under the Southern Illinois order, about 50 percent of the market's producer milk was used in other than fluid milk products during June 1985 compared with only 36 percent for June 1984. Similarly, for the Central Illinois market, about 52 percent of the producer milk supply was used for other than fluid milk products in June 1985 compared to about 42 percent a year earlier. There is every indication that favorable feed and weather conditions will result in the need to dispose of a greater proportion of milk supplies during August than can be accommodated under the applicable diversion limitations of the orders. A suspension action will permit the efficient disposition of the increased milk supplies and provide market participants with time to evaluate the production and sales relationships for the markets to consider appropriate marketing adjustments prior to September. In the absence of a suspension action, it is evident that costly and inefficient movements of milk would have to be made solely for the purpose of pooling the milk of dairy farmers who have regularly supplied the fluid milk needs of the respective markets.

It is hereby found and determined that thirty days' notice of the effective date here of is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing areas in that without the suspension costly and inefficient movements of milk will be made solely to qualify the available milk for pool status under the orders;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Parts 1032 and 1050

Milk Marketing Orders, Milk, Dairy Products.

The authority citation for 7 CFR Parts 1032 and 1050 continues to read as follows:

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

It is therefore ordered, That the following language in § 1032.13(b)(2) of the Southern Illinois order and in § 1050.13(d) (1), (2), (3), (4) and (5) of the Central Illinois order is hereby suspended for August 1985:

PART 1032—[AMENDED]

§ 1032.13 [Temporarily suspended in part]

1. In 7 CFR Part 1032 (Southern Illinois) in § 1032.13(b)(2), the words "on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer".

PART 1050—[AMENDED]

§ 1050.13 [Temporarily suspended in part]

2. In 7 CFR Part 1050 (Central Illinois):

a. In § 1050.13(d)(1), the words "During May, June and July".

b. In § 1050.13, paragraphs (d) (2), (3), (4) and (5).

Signed at Washington, D.C., on: August 12, 1985.

Karen K. Darling,

Deputy Assistant Secretary Marketing & Inspection Services.

[FR Doc. 85–19559 Filed 8–15–85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24749; Amdt. No. 1301]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or

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

By Subscription—

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

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426–8277.

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

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

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97:

Approaches, Standard instrument procedures.

Issued in Washington, D.C., on August 9, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of The Amendment

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

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

* * * *Effective September 26, 1985*

Idaho Falls, ID—Fanning Field, VOR RWY 2, Amdt 4
Idaho Falls, ID—Fanning Field, VOR RWY 20, Amdt 6
New Orleans, LA—Lakefront, VOR RWY 18R, Amdt 2
New Orleans, LA—Lakefront, VOR/DME RWY 36L, Amdt 5
New Orleans, LA—Lakefront, VOR-A, Amdt 15
New Orleans, LA—Lakefront, VOR-B Amdt 6
Ruston, LA—Ruston Muni, VOR/DME-A, Amdt 8
Cut Bank, MT—Cut Bank Muni, VOR RWY 31, Amdt 12
Chillicothe, OH—Ross County, VOR RWY 22, Orig
Aurora, OR—Aurora State, VOR/DME-A, Amdt 1
Killeen, TX—Killeen Municipal, VOR-A, Orig
Cable, WI—Cable Union, VOR/DME-A, Amdt 4

3. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF-DME SIAPs identified as follows:

* * * *Effective September 26, 1985*

Ocala, FL—Ocala Muni/Jim Taylor Field, LOC RWY 36, Amdt 4
Idaho Falls, ID—Fanning Field, LOC BC RWY 2, Amdt 2
Campbellsville, KY—Taylor County, LOC RWY 23, Orig
St. Paul, MN—St. Paul Downtown Holman Fld, LOC RWY 30, Amdt 10
Portland, OR—Portland Intl, LOC/DME RWY 20, Amdt 6

4. By amending § 97.27 NDB and NDB/DME SIAPS identified as follows:

* * * *Effective September 26, 1985*

Ocala, FL—Ocala Muni/Jim Taylor Field, NDB RWY 36, Orig
Idaho Falls, ID—Fanning Field, NDB RWY 20, Amdt 6
Columbus, IN—Columbus Muni, NDB RWY 22, Amdt 8
Campbellsville, KY—Taylor County, NDB RWY 23, Orig
Three Rivers, MI—Three Rivers Muni Dr. Haines, NDB RWY 27, Amdt 7
St. Paul, MN—St. Paul Downtown Holman Fld, NDB RWY 30, Amdt 4
Chillicothe, OH—Ross County, NDB RWY 22, Amdt 3
Sandy Springs, OK—William R. Pogue Muni, NDB RWY 35, Orig
Moen Island, TT—Truk Intl, NDB/DME RWY 4, Orig
Yap Island, TT—Yap International, NDB/DME RWY 7, Orig
Cable, WI—Cable Union, NDB-B, Amdt 8

* * * *Effective August 2, 1985*

French Lick, IN—French Lick Muni, NDB RWY 26, Amdt 5, Cancelled

5. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective September 26, 1985*

Idaho Falls, ID—Fanning Field, ILS RWY 20, Amdt 5
Columbus, IN—Columbus Muni, ILS RWY 22, Amdt 5
St. Paul, MN—St. Paul Downtown Holman Fld, MLS RWY 30 (Interim), Amdt 6

* * * *Effective August 29, 1985*

Binghamton, NY—Edwin A. Link Field-Broome County, ILS RWY 34, Amdt 20
Richmond, VA—Richard Evelyn Byrd Intl, MLS RWY 2, Orig

* * * *Effective August 1, 1985*

Saginaw, MI—Tri City, ILS RWY 23, Amdt 2

6. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective September 26, 1985*

Florence, SC—Florence-City-County, RADAR-1, Orig

7. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective September 26, 1985*

Atlantic City, NJ—Atlantic City Muni/Bader Field, RNAV RWY 11, Amdt 3
Massena, NY—Massena Intl-Richards Field, RNAV RWY 5, Amdt 4
Massena, NY—Massena Intl-Richards Field, RNAV RWY 23, Amdt 5
Cable, WI—Cable Union, RNAV RWY 34, Amdt 3

[FR Doc. 85-19509 Filed 8-15-85; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9169]

Associated Mills, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Chicago, Ill. manufacturer and seller of the Pollenex Pure Air "99" Air Cleaner/Deodorizer Model 699, among other things, to cease representing, contrary to fact, that this portable household air cleaning appliance removes most tobacco smoke and substantially all ragweed pollen and dust from the air people breathe under household conditions and that the appliance effectively filters all the air in a 14 foot × 18 foot room in less than an hour. The order also bars the firm from misrepresenting the ability of any such appliance or equipment to clean or remove any quantity of indoor air contaminants, or the conditions of use under which the appliance would remove the contaminants. Further, the company is required to possess competent and reliable evidence to support any claim relating to the performance characteristics of such appliance; and maintain written records of all materials that substantiate, contradict, or qualify performance claims.

DATE: Complaint issued Oct. 24, 1983. Order issued July 23, 1985.[1]

FOR FURTHER INFORMATION CONTACT: FTC/B-411-5, Judith Wilkenfeld, Washington, D.C. 20580. (202) 376-8648.

SUPPLEMENTARY INFORMATION: On Tuesday, Feb. 5, 1985, there was published in the **Federal Register**, 50 FR 4980, a proposed consent agreement with analysis In the Matter of Associated Mills, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.10–5 Knowingly by advertising agent; § 13.170 Qualities or properties of product or service; § 13.170–16 Cleansing, purifying; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1762 Tests, purported. Subpart—Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Household air cleaning appliances, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–19550 Filed 8–15–85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C–3159]

Decorating Products Association of Central Florida; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: This consent order requires Decorating Products Association of Central Florida (DPACF), an association composed of wallcovering retailers and suppliers, among other things, to cease, individually or in concert with others, engaging in conduct having the purpose or effect of fixing prices, terms or conditions of sale of wallcoverings; coercing sellers of wallcoverings to adopt or abandon any practice or policy concerning pricing, conditions of sale, distribution method, or choice of customers. DPACF is also barred from suggesting or recommending to its members that they refuse to deal or otherwise attempt to affect a supplier's pricing or distribution methods; and from assisting any affiliated organization or its members in engaging in the prohibited conduct. The organization is further required to mail a copy of the order to each of its members and to publish it in its newsletter in a timely fashion. Finally, the order obligates DPACF to require its members to agree in writing to be bound by the terms of the order as a condition of membership; and to terminate for a period of one year any member believed to have engaged in the prohibited practices after the effective date of the order.

DATE: Complaint and Order issued July 26, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Ed Glynn, FTC/L–502–4, Washington, D.C. 20580. (202) 634–6608.

SUPPLEMENTARY INFORMATION: On Tuesday, May 14, 1985, there was published in the **Federal Register**, 50 FR 20107, *correction*, 50 FR 23316, a proposed consent agreement with analysis In the Matter of Decorating Products Association of Central Florida, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.367 Members; § 13.370 Suppliers and sellers. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions; § 13.425 To enforce or bring about resale price maintenance; § 13.433 To fix prices; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records.

List of Subjects in 16 CFR Part 13

Wallcoverings, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–19548 Filed 8–15–85; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

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16 CFR Part 13

[Docket No. C–3158]

Hawaii Dental Service Corp., Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Hawaii Dental Service Corporation ("HDS"), an organization engaged in the administration and operation of pre-paid dental care programs whose dentist members provide dental care service for a fee, among other things, to cease basing its decision to send dentists to the counties of Maui, Kauai, and Hawaii, on the approval or consent of member dentists who reside in those counties. The order bars the organization from denying membership to any dentist licensed to practice in Hawaii, based in whole or in part on the approval of other dentists in the geographic location of the dentist's proposed practice, and from including, encouraging, or assisting any dentist or other non-governmental organization to take any of the prohibited actions. Within thirty days from the effective date of the order, HDS is required to remove from its constitution and bylaws or other guidelines, any provision, interpretation or policy statement that is inconsistent with the order and publish in its newsletter and another publication, a notice of such removal.

DATE: Complaint and Order issued July 26, 1985 [1].

FOR FURTHER INFORMATION CONTACT: Erika R. Wodinski, San Francisco Regional Office, Federal Trade Commission, 450 Golden Gate Ave., San Francisco, CA 94102. (415) 556–1270.

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

SUPPLEMENTARY INFORMATION: On Monday, April 29, 1985, there was published in the **Federal Register**, 50 FR 16708, a proposed consent agreement with analysis In the Matter of Hawaii Dental Service Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.350 Customers or prospective customers; §13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.388 To control allocation and solicitation of customers; § 13.425 To enforce or bring about resale price maintenance; § 13.475 To restrict competition in buying: §13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–37 Formal regulatory and/or statutory requirements; § 13.533–40 Furnishing information to media; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints.

List of Subjects in 16 CFR Part 13

Dental services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–19549 Filed 8–15–85; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–2859]

Salomon/North America, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order modifies the 1977 consent order (42 FR 6797) issued with respondent by deleting provisions in the original order that prohibited the company from barring transshipment (sales between retailers) or limiting the retail locations from which dealers may sell its products. The modifying order is the result of respondent's request to the Commission for modification of the terms of the original order.

DATES: Consent Order issued Jan. 6, 1977. Modifying Order issued July 30, 1985.

FOR FURTHER INFORMATION CONTACT: FTC/L–301, Daniel P. Ducore, Washington, D.C. 20580. (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of Salomon/North America, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are modified by deleting the following: Subpart—Combining or Conspiring: § 13.450 To limit distribution or dealings to regular, established or acceptable channels or classes.

List of Subjects in 16 CFR Part 13

Ski bindings and equipment, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Order Reopening and Modifying Order

Commissioners: James C. Miller III, Chairman; Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

In the Matter of Salomon/North America, Inc., Docket No. C–2859.

Issued: January 6, 1977.

On March 25, 1985, respondent Salomon/North America, Inc. ("Salomon") filed its "Request of Salomon/North America, Inc. for Modification of Consent Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding in Docket No. C–2859 and to modify the order issued by the Commission in this case on January 6, 1977, by deleting the provisions that restrict Salomon's ability to limit the transshipping of its products and that prohibit Salomon from limiting the retail locations from which dealers may sell its products. Salomon also requests deletion of Paragraph II of the order which creates a limited exception to the order's provision that restricts Salomon's ability to limit the transshipment of its products. Salomon's Request was on the public record for thirty days and no comments were received.

After reviewing Salomon's request and other available information, the Commission has concluded that the public interest warrants reopening and modification of the order in the manner requested by Salomon. The transshipment and location restriction provisions of the order (subparagraphs I.B and I.C) were adopted principally as "fencing-in" restraints ancillary to the order's ban on resale price maintenance ("RPM") Salomon has shown that it does not fix the prices at which its authorized dealers resell Salomon ski products, that Salomon ski product prices vary from dealer to dealer, and that the transshipment and location restriction provisions therefore have served their purpose to encourage the emergence of intrabrand price competition in Salomon products. To the extent that subparagraphs I.B and I.C were intended as a remedy for the alleged anticompetitive effects of transshipment and location restrictions independent of RPM, the Supreme Court's ruling in *Continental T.V. Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 26 (1977), constitutes a change in law that justifies reexamination of the provisions. Such a reexamination, based on the record presented by Salomon and other information, demonstrates that transshipment and location restraints by Salomon would pose no threat to interbrand competition.

Salomon's inability to ban transshipping and sales from unauthorized locations would likely cause Salomon significant competitive injury by, among other things, lessening the efficiency of Salomon's distribution system, discouraging dealers from remaining with Salomon, exposing Salomon's customers to increased risk of injury and, consequently, exposing Salomon to personal injury claims.

The transshipment and location restriction provisions in question appear to have served their remedial purpose. There is no indication that Salomon has engaged in RPM (or has breached the order's transshipping and location restriction provisions) from January 6, 1977, to date, and nothing in the record suggests that there is a need to continue the order's transshipment and location restriction provisions to ensure that RPM is not reinstituted by Salomon.

Accordingly, it is ordered that this matter be, and it hereby is, reopened and that subparagraphs I.B, I.C and Paragraph II of the order be, and they hereby are, deleted.

Issued: July 30, 1985.

By the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85–19547 Filed 8–15–85; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

20 CFR Part 450

42 CFR Parts 400, 405, 408, 409, 442, 456, 481, 485, 488 and 491

[BERC-260-F]

Medicare and Medicaid; Corrections and Conforming Changes

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rules and corrections.

SUMMARY: This document—

1. Removes unnecessary rules from the Social Security regulations.

2. Removes reporting requirements that never went into effect because they were not approved by the Office of Management and Budget.

3. Corrects errors and omissions in final rules published in December 1982 and March 1983.

4. Makes technical corrections and conforming changes in other Medicare and Medicaid regulations that deal with payment of benefits, exclusions from Medicare, beneficiary appeals, and physician certification. These changes are needed primarily to conform certain rules to changes made in other regulations since the rules were last published.

5. Redesignates Parts 481 and 488 to make possible a more logical organization of Subchapter E—Standards and Certification.

EFFECTIVE DATE: These rules are effective September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias, (202) 245-0383.

SUPPLEMENTARY INFORMATION: Part 450 of Chapter III of Title 20 of the Code of Federal Regulations, which deals with grants to demonstrate the effectiveness of health care rate regulation, as authorized under section 1526 of the Public Health Service Act, is removed as unnecessary because—

- We have never approved any demonstration projects under these rules;
- For the past several years, Congress has not appropriated any funds to implement the section 1526 authority; and
- Section 1886(c) of the Medicare statute, enacted in September 1982 and amended in April 1983, allows States to request HCFA approval of a State's hospital reimbursement control system under which payment for services provided by hospitals in the State may be made in accordance with the State's system, rather than in accordance with other provisions of title XVIII. Thus, demonstration projects for health care rate regulation are unnecessary.

Two sets of final rules are corrected by this document. The first, published on December 15, 1982 (47 FR 56282), established Part 488, the rules for the comprehensive outpatient rehabilitation facility (CORF) services authorized under section 1861(cc) of the Social Security Act. Part 488 (which is being redesignated as Part 485) needed only the correction of the statement that a CORF psychologist must hold a master's degree "from a training program approved by the State." Since training programs are not approved by the State and do not grant degrees, we corrected the statement to read ". . . a master's degree in psychology from an educational institution approved by the State in which it is located."

The second was published on March 25, 1983 (48 FR 12526) to implement 13 statutory provisions and to clarify, reorganize, and renumber a major portion of the Medicare hospital insurance regulations. Most of the corrections are required because of unintended omissions. In one case (§ 409.12) it was necessary to revise the language because it did not clearly describe the statutory exclusion of private duty nursing. The definition of "provider" is amended to include a hospice; and the definition of "State", to reflect the extension of Medicaid funding to American Samoa.

A third set of final rules, published on September 1, 1983 (48 FR 39752) implemented sections 602 (e), (h), and (k) of Pub. L. 98-21 (the Social Security Amendments of 1983), which amended the Act to (1) exclude from Medicare payment any service (other than physicians' services) furnished to hospital inpatients unless the service is furnished by, or under arrangements made by, the hospital; (2) require hospitals to agree, as a condition for approving a provider agreement, to furnish directly or under arrangements any inpatient hospital services (except physicians services) that are covered by Medicare; and (3) provide that the first two requirements may be waived for any cost reporting period that begins before October 1986, if a hospital has, since before October 1982, allowed direct billing under Part B so extensively that immediate implementation of the exclusion would threaten the stability of the care furnished to the hospital's inpatients. The rules published on September 1, 1983 added a new paragraph (m) to § 405.310 to reflect the new exclusion and the exceptions to that exclusion. Because the language of that paragraph (m) is unclear and could be misleading, we are revising it to ensure proper understanding and application. We are also updating other paragraphs of § 405.310 as explained below in the discussion of changes to Subpart C of Part 405 of the Medicare rules. This document also corrects and conforms other Medicare regulations in Subparts A, C, F, G, K, and P of Part 405, and in Parts 456 and 474, as explained below:

1. In Subpart A, which deals with payment of hospital insurance benefits, we:

a. Revised § 405.165 to —

- Substitute the term "posthospital SNF care" for "posthospital extended care services" wherever it appears, and add "participating hospital that has a swing-bed approval" as a place (in addition to a SNF) where Medicare pays for SNF care. (These changes are needed for consistency with the rules published on March 25, 1983 at 48 FR 12541-12546, which change the terminology and specify coverage of SNF care furnished in any hospital that has an agreement to use some of its beds to furnish SNF type care.)
- Delete the parenthetical statement "(other than a doctor of podiatry or surgical chiropody)" because, under section 1861(r)(3) of the Social Security Act (the Act) as amended by section 951 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), a doctor of podiatric medicine is recognized as a physician for purposes of certifying need for services, if specified conditions are met.
- Delete the reference to Part 463 Professional Standards Review Organization (PSRO) because those organizations no longer function to review Medicare claims.
- Substitute reference to "§§ 409.20 and 409.30-409.36" for reference to §§ 405.125 through 405.128a", because the latter sections were renumbered by the March 25, 1983 regulations cited above.
- Delete the reference to § 405.133 because that section was removed from the Medicare regulations by the March 25, 1983 publication. Section 405.133 dealt with the "presumed coverage" provision that was formerly contained in section 1814 of the Act, and was repealed by section 941 of Pub. L. 96-499.
- Conform the content on inpatient hospital services (required before admission to the SNF) to §§ 409.3 and 409.30 of the March 25, 1983 regulations (48 FR 12542 and 12544).

b. Revised § 405.166 to —

• Change "posthospital extended care services" to "posthospital SNF care".

• Indicate briefly the content of cited § 405.1137.

• Revise paragraph (b) to reflect the fact that it is PROs rather than PSROs that may now assume responsibility for review of SNF care.

c. Revised § 405.167 to—

• Change "posthospital extended care services" to "posthospital SNF care".

• Update the content to show that—

(1) HCFA (rather than the Secretary) makes the determination, as is set forth in § 489.50 of the Medicare regulations.

(2) The provisions also apply to SNF care furnished by a hospital that has a swing-bed approval.

• Delete unnecessary cross-references.

d. Revised § 405.170 to—

• Delete the word "posthospital" wherever it appears because the requirement that home health services be related to prior inpatient hospital care was removed from section 1812(b)(3) of the Act by section 930 of Pub. L. 96–499.

• Delete the details of certification requirements because they duplicated the content of § 405.1633, which contains the applicable rules on certification for home health services and is cited in § 405.170.

• Delete content pertinent to the presumed coverage provision that was repealed.

• Include reference to § 409.42, which contains other conditions for coverage of home health services.

• Remove paragraph (c) which dealt with the revoked "presumed coverage" provision explained above in the discussion of § 405.165.

e. Made other minor editorial changes and corrections.

2. In Subpart C, which deals with exclusions from Medicare and exceptions to those exclusions, we have, in addition to revising the recently added paragraph (m) of § 405.310, as discussed above, made the following kinds of changes:

a. *Updating to reflect statutory changes already in effect.* Sections 936 and 939 of Pub. L. 96–499 amended section 1862 of the Act to broaden benefits by (1) extending coverage of inpatient hospital care in connection with dental procedures to situations in which hospitalization is required because of the severity of the dental procedures, and (2) encompassing treatment of warts of the foot. Section 1 of Pub. L. 96–611 added sections 1861(s)(10) and 1862(a)(1)(B) to the Act to provide coverage for pneumococcal vaccine and vaccination to the extent that it is reasonable and necessary for the prevention of illness. These additional services are covered as exceptions to specific exclusions from Medicare. Accordingly, they are reflected, respectively, in revised paragraphs (i), (1), and (e) of § 405.310.

b. *Updating to reflect statutory changes already implemented by final rules.* Section 122 of Pub. L. 97–248 amended section 1812 of the Act to expand Medicare Part A coverage to include hospice care. Implementing rules were published on December 16, 1983 (48 FR 56008). The hospice rules provide exceptions to three of the § 405.310 exclusions: custodial care (paragraph (g)), personal comfort services (paragraph (j)), and services not reasonable and necessary (paragraph (k)).

c. *Conforming and clarifying editorial changes.* We made minor editorial changes in paragraphs (a) through (d), (f), and (h) of § 405.310, to achieve consistency of style and terminology with the paragraphs that required the substantive changes discussed above.

d. *Removal of duplicative content.* We removed paragraph (n) of that section because its content was transferred to § 409.30 by the final rules published on March 25, 1983, and discussed above.

3. In Subpart D, which deals with principles of reimbursement, we have:

• Removed reporting requirements that never became effective because they were not approved by the Executive Office of Management and Budget (EOMB). (Paragraph (h) of § 405.421, which is removed, contained reporting requirements applicable to providers that receive grants for primary care training programs. It was published with a note indicating that it would not go into effect until approved by EOMB).

4. In Subpart F, in § 405.658, which deals with emergency services furnished by nonparticipating hospitals, we have corrected cross-references.

5. In Subpart G, which sets forth the policies and procedures for beneficiary appeals under the hospital insurance program, we have made the following changes:

• Removed the appendix that reproduced the Social Security regulations that contain provisions applicable to beneficiary appeals (20 CFR Part 404, Subparts J and R). We supplied the appendix so that users of HCFA regulations could get the complete picture without having to refer to another title of the CFR. However, when the Social Security regulations were revised, our appendix became outdated. We have concluded that the cost of maintaining the appendix outweighs the advantages that it might provide.

• Deleted a reference to that appendix (§ 405.701).

• Corrected cross-references in § 405.710(b).

6. In Subpart K, which sets forth the conditions of participation for skilled nursing facilities (SNFs), we amended §405.1121 to—

• Remove reporting requirements that have never gone into effect because they were not approved by the Office of Management and Budget; and

• Substitute language that reflects only the provisions of section 1861(j)(14) of the Act, which is clear, and sufficient to ensure the protection of funds belonging to SMF patients.

7. In Subpart P, which sets forth the requirements for physician certification and recertification, we removed an outdated cross-reference in § 405.1625–1, revised §§ 405.1629 and 405.1632 to conform their terminology to previously published revisions of §§ 405.1627, 405.1633, and 405.1634. In addition —

We amended § 405.1632 to —

• Substitute the term "posthospital SNF care" for "posthospital extended care services" wherever it appears.

• Delete content pertaining to the "presumed coverage" provisions that were repealed by section 941 of Pub. L. 96–499 and removed from other Medicare regulations by the final rules published on March 25, 1983.

• Make clear that the rules of the section apply to SNF care furnished by a swing-bed hospital as well as that furnished by a SNF.

• Conform the "content of certification" rule to §§ 409.3 and 409.30 of the March 25, 1983 regulations (48 FR 12542 and 12544).

• Provide captions that make the section easier to use and understand.

We amended § 405.1634 to —

• Clarify who must sign a plan for speech pathology service.

• Reflect the provisions of sections 2341 and 2342 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), as they affect outpatient physical therapy (OPT) services. Section 2341 provides that, if specified conditions are met, a doctor of podiatric medicine is considered a physician for the requirement that OPT services be furnished while the beneficiary is under the care of a physician. Section 2342 provides that a physical therapist (as well as a physician) may establish a plan of treatment for OPT services. The plan must be reviewed by a physician.

• Incorporate the content of § 405.250–1, which is more appropriate to this section.

8. In part 408, Subpart A, which deals with eligibility and entitlement to

hospital insurance (Medicare Part A), we have substituted designated subpart titles for undesignated headings, to facilitate references to these rules.

9. In Part 409, Subpart A, which deals with Medicare Part A benefits, we amended §409.42(b)(2) to provide that, if specified conditions are met, a doctor of podiatric medicine (as well as a doctor of medicine or osteopathy) is considered a physician to fulfill the requirements that home health services be provided while the beneficiary is "under the care of a physician". We have also substituted a designated subpart title for each undesignated heading, to facilitate reference to these rules.

10. In Part 442, which sets forth standards for Medicaid payment for skilled nursing and intermediate care facility services, we revised three sections to conform to the changes made in the Medicare rules on protection of patients' funds. Previous proposals to revise §§ 442.311, 442.404, 442.406, and to remove 442.320 did not go into effect because they would have made applicable to Medicaid the Medicare information collection requirements (§ 405.1121(m)) that EOMB did not approve. Now that § 405.1121(m) has been revised to include only the statutory requirements, there is no reason no to make it applicable to Medicaid. We have removed the effective date note at the end of § 442.320. Section 442.320 was to be deleted effective October 22, 1980, upon EOMB approval of the regulations at § 405.1121(m) Since EOMB did not approve those regulations, § 442.320 will remain and the effective date note will be removed.

11. In Part 456, Subpart F, which deals with utilization control activities in SNFs, we amended § 456.360 to reflect the amendment to section 1903(g)(1)(A) of the Act by section 137(b)(12) of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). The amendment extends to private ICFs for the mentally retarded (ICFs/MR) timing of recertification provisions previously applicable only to public ICFs/MR.

12. We redesignated Part 481 as Part 491, and Part 488 as Part 485, to permit a more logical organization of Subchapter E.

Impact Analysis Statement

Executive Order 12291

Executive Order 12291 requires agencies to prepare a regulatory analysis for any rule that is likely to have an annual impact of $100 million or more on the general economy; cause a major increase in costs or prices; or meet other thresholds specified in section 1(b) of the Order. We have determined tht none of the conforming amendments will affect the economy by more than $100 million. These provisions were self-implementing upon date of enactment. Therefore, these regulations have no additional impact beyond that which results from the statutory provisions.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) requires agencies to prepare and publish a regulatory flexibility analysis (RFA) for any regulation that will have "a significant impact on a substantial number of small entities". A small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000. The purpose of the analysis would be to anticipate the impact and to seek alternatives that would have a less negative effect.

An RFA is not required for these rules because we have determined, and the Secretary certifies, that they will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Section 405.1632(b) through (f) of this final rule contains information collection requirements subject to approval by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. When approval is obtained, we will publish a notice in the **Federal Register** to that effect.

Waiver of Proposed Rulemaking

The changes made by these rules are of three types:

- Minor technical corrections, such as the removal of rules that never went into effect.
- Minor clarifying editorial revisions.
- Minor amendments needed to conform the rules to changes in the law or in other regulations. In no instance does any of the amendments affect the substance of the Medicare or Medicaid rules, apart from the changes in the law or other regulations. Therefore we find that the usual notice and opportunity for public comment are unnecessary.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 408

Health facilities, Kidney diseases, Medicare.

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 456

Administrative practice and procedure, Grant programs-health, Health facilities, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 481 (Redesignated as Part 491)

Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 488 (Redesignated as Part 485)

Health facilities, Medicare, Reporting and recordkeeping requirements.

Title 20—Employees' Benefits

20 CFR Chapter III is amended as set forth below:

PART 450—RESEARCH GRANTS AND CONTRACTS [REMOVED]

20 CFR Part 450 is removed as outdated and unnecessary, and the table of contents of Chapter III is amended to reflect this change.

Title 42—Public Health

42 CFR Chapter IV is amended as set forth below:

I. PART 400—INTRODUCTION; DEFINITIONS

A. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

B. *§ 400.203 [Amended]*

In § 400.203, in the definition of "*State*", "American Samoa," is added immediately after "Guam,".

II. PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart A—Hospital Insurance Benefits

1. The authority citation for Subpart A continues to read as follows:

Authority: Secs. 1102, 1814, 1815, 1861, 1866(d), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395g, 1395x, 1395cc(d), and 1395hh).

2. *§ 405.150 [Amended]*

In § 405.150, reference to "§ 405.156" is removed, and reference to "Subpart F of this Part 405" is changed to "Part 489 of this chapter".

3. *§ 405.152 [Amended]*

a. In § 405.152(a), introductory text, reference to "§ 405.151" is changed to "§ 409.69", and the phrase "—see § 405.606)" is changed to "and Part 489 of this chapter)".

b. § 405.152(a)(2), the phrase "meets the requirements of § 405.102;" is removed, and "is entitled to hospital insurance benefits;" is inserted.

c. In § 405.152(a)(4), reference to "Subpart F of this Part 405" is changed to "Part 489 of this chapter".

d. In § 405.152(a)(7), reference to "§ 405.606" is changed to "Part 489 of this chapter."

e. In § 405.152(b), the phrase "(see § 405.116)" is removed.

4. *§ 405.157 [Amended]*

In § 405.157, introductory text, the phrase "(see § 405.102)" is removed.

5. *§ 405.158 [Amended]*

In § 405.158(a)(1), reference to "§§ 405.113 through 405.115" is changed to "§§ 409.80, 409.82, 409.83, and 409.87".

6. *§ 405.160 [Amended]*

In § 405.160(d), reference to "§ 405.116" is changed to "§§ 409.10 through 409.18".

7. Section 405.165 is revised to read as follows:

§ 405.165 Payment for posthospital SNF care.

Medicare Part A pays for posthospital SNF care furnished in a SNF or a participating hospital that has a swing-bed approval if the following requirements are met:

(a) *Request for payment.* A written request for payment is filed by or on behalf of the individual to whom the services were furnished.

(b) *Physician certification.* A physician provides certification and recertification in accordance with § 405.1632.

(c) *Other requirements.* (1) The conditions for coverage set forth in §§ 409.20 and 409.30 through 409.36 of this chapter are met.

(2) Payment is not prohibited under §§ 405.166 and 405.167.

8. Section 405.166 is revised to read as follows:

§ 405.166 Prohibition against payment for posthospital SNF care after a utilization review finding that further care is not medically necessary.

(a) *SNF system of utilization review (UR).* If a finding has been made, under a SNF UR system required by § 405.1137, that further posthospital SNF care is not medically necessary, payment may be made only for care furnished before the fourth day following the day the SNF received notice of the finding.

(b) *PRO system of review.* If a PRO has assumed review responsibility and has found that further SNF care is not medically necessary, or should be furnished more economically or on an outpatient basis or in an inpatient facility of a different type, payment may be made for up to two days after the SNF receives notice of the PRO finding, but only if—

(1) The PRO has determined that additional time is required to arrange for post-discharge care; and

(2) It is determined, under § 405.332, that the SNF did not know, and could not reasonably have been expected to know that Medicare payment would not be made.

9. Section 405.167 is revised to read as follows:

§ 405.167 Prohibition against payment for posthospital SNF care furnished by a facility that fails to make timely utilization review (UR).

(a) *Determination and notice.* If HCFA determines that the facility has failed substantially to make timely UR of long-stay cases, it will notify the SNF and any hospital with which the SNF has a transfer agreement (or the hospital that has a swing-bed approval) and the public, that payment to the facility will be limited, and specify the effective date of the determination.

(b) *Limitation on payment.* Payment may not be made for SNF care furnished after the 20th consecutive day of care furnished to an individual admitted to the facility after the effective date of HCFA's determination.

10. Section 405.170 is revised to read as follows:

§ 405.170 Payment for home health services: Conditions.

Medicare Part A pays for home health services if the following conditions are met:

(a) *Request for payment.* A written request for payment is filed by or on behalf of the individual to whom the services were furnished.

(b) *Physician certification.* A physician provides certification and recertification in accordance with § 405.1633.

(c) *Other conditions.* The requirements of § 409.42 of this chapter are met.

11. *§ 405.195 [Amended]*

In § 405.195(d)(1), reference to "§ 405.106" is changed to "§ 405.196".

12. *§ 405.196 [Amended]*

In § 405.196(a), the phrase "(see § 405.131)" is removed.

B. Subpart B—Supplementary Medical Insurance Benefits; Enrollment, Exclusions, and Payments

1. The authority citation of Subpart B is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. *§ 405.250 [Redesignated]*

§ 405.250–1 is redesignated as § 405.1634(b) and revised elsewhere in this document. The table of contents of Subpart B is amended to reflect this change.

C. Subpart C—Exclusions, Recovery of Overpayments, Liability of a Certifying Officer and Suspension of Payment

1. The authority citation of Subpart C is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. Section 405.310 is revised to read as follows:

§ 405.310 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) *Routine physical checkups such as—*

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptom, complaint, or injury; or

(2) Examinations required by insurance companies, business establishments, government agencies, or other third parties.

(b) *Eyeglasses or contact lenses, except for* post-surgical lenses customarily used during convalescence from eye surgery in which the lens of the eye was removed (e.g., cataract surgery); or prosthetic lenses for patients who lack the lens of the eye because of congential absence or surgical removal.

(c) *Eye examinations* for the purpose of prescribing, fitting, or changing eyeglasses or contact lenses for refractive error only and procedures performed in the course of any eye

examination to determine the refractive state of the eyes, without regard to the reason for the performance of the refractive procedures. Refractive procedures are excluded even when performed in connection with otherwise covered diagnosis or treatment of illness or injury.

(d) *Hearing aids* or examinations for the purpose of prescribing, fitting, or changing hearing aids.

(e) *Immunizations, except for*—

(1) Vaccinations or inoculations directly related to the treatment of an injury or direct exposure such as antirabies treatment, tetanus antitoxin or booster vaccine, botulin antitoxin, antivenom sera, or immune globulin; and

(2) Pneumococcal vaccinations that are reasonable and necessary for the prevention of illness.

(f) *Orthopedic shoes* or other supportive devices for the feet, *except when* shoes are integral parts of leg braces.

(g) *Custodial care, except as necessary* for the palliation or management of terminal illness, as provided in Part 418 of this chapter. (Custodial care is any care that does not meet the requirements for coverage as posthospital SNF care as set forth in §§ 409.30 through 409.35 of this chapter.)

(h) *Cosmetic surgery* and related services, *except* as required for the prompt repair of accidental injury or to improve the functioning of a malformed body member.

(i) *Dental services* in connection with the care, treatment, filling, removal, or replacement of teeth, or structures directly supporting the teeth, *except for* inpatient hospital services in connection with such dental procedures when hospitalization is required because of—

(1) The individual's underlying medical condition and clinical status; or

(2) The severity of the dental procedures.[1]

(j) *Personal comfort services, except* as necessary for the palliation or management of terminal illness as provided in Part 418 of this chapter. The use of a television set or a telephone are examples of personal comfort services.

(k) *Any services that are not reasonable and necessary* for one of the following purposes:

(1) For the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

(2) In the case of hospice services, for the palliation or management of terminal illness, as provided in Part 418 of this chapter.

(3) In the case of pneumococcal vaccine, for the prevention of illness.

(l) *Foot care.*—(1) *Basic rule.* Except as provided in paragraph (1)(2) of this section, any services furnished in connection with the following:

(i) *Routine foot care,* such as the cutting or removal of corns, or calluses, the trimming of nails, routine hygienic care (preventive maintenance care ordinarily within the realm of self care), and any services performed in the absence of localized illness, injury, or symptoms involving the feet.

(ii) *The evaluation or treatment of subluxations of the feet,* regardless of underlying pathology. (Subluxations are structural misalignments of the joints, other than fractures or complete dislocations, that require treatment only by nonsurgical methods.)

(iii) *The evaluation or treatment of flattened arches* (including the prescription of supportive devices) regardless of the underlying pathology.

(2) *Exception.* Treatment of warts is covered, and the services excluded under paragraph (l)(1), of this section are covered if they are furnished—

(i) As an incident to, at the same time as, and as a necessary integral part of a primary covered procedure performed on the foot; or

(ii) As initial diagnostic services (regardless of the resulting diagnosis), in connection with a specific symptom or complaint that might arise from a condition whose treatment would be covered.

(m) *Services to hospital inpatients.*—(1) *Basic rule.* Except as provided in paragraph (m)(2) of this section, any service furnished to an inpatient of a hospital by an entity other than the hospital, unless the hospital has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the hospital's inpatients.[2]

(2) *Exceptions.* (i) Physicians' services that meet the criteria of § 405.550(b) for payment on a reasonable charge basis, and services of an anesthetist employed by a physician that meet the conditions of § 405.553(b)(4), are not excluded.

(ii) The exclusion may be waived temporarily by HCFA, in accordance with § 489.23 of this chapter.

(Services subject to exclusion under this paragraph include, but are not limited to, clinical laboratory services, pacemakers, artificial limbs, knees, and hips, intraocular lenses, total parenteral nutrition, and services incident to physicians' services.)

(n) [Removed]

D. Subpart F—Notice, Election, and Agreements

1. The authority citation of Subpart F is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

2. *§ 405.658 [Amended]*

In § 405.658, the following references are corrected:

a. In paragraph (b)(1), "§§ 405.607 through 405.610" is changed to "Subpart C of Part 489 of this chapter".

b. In paragraph (b)(2), "§§ 405.618 through 405.621" is changed to "Subpart D of Part 489 of this chapter".

E. Subpart G—Reconsiderations and Appeals Under the Hospital Insurance Program

1. The authority citation of Subpart G is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. *§ 405.701 [Amended]*

In § 405.701(c), the comma following the parenthesis and the phrase "reprinted in the appendix to this subpart" are removed.

3. *§ 405.710 [Amended]*

In § 405.710(b), reference to "§ 405.704(b)" is changed to "§ 405.704(c)" wherever it appears.

4. *Appendix—[Removed]*

The Appendix to Subpart G is removed and the table of contents of the subpart is amended to reflect this change.

F. Subpart K—Conditions of Participation; Skilled Nursing Facilities

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

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. *§ 405.1121 [Amended]*

Section 405.1121 is amended by adding a new paragraph (m) to read as follows:

* * * * *

(m) *Standard: Protection of patients' funds.* The facility establishes and maintains a system that—

(1) Ensures full and complete accounting of its patients' personal funds; and

(2) Precludes commingling of a patient's funds with funds of the facility or of any person other than another patient.

3. The Effective Date Note at the end of § 405.1121 and the small print

[1] Paragraph (i)(2) is effective for services furnished after June 30, 1981.

[2] This exclusion was effective as of October 1, 1983.

paragraphs (k)(6) and (m) following the Note are removed.

G. Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

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

Authority: Secs. 1102, 1814, 1835, 1871, and 1883 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395h, 1395hh, and 1395tt).

2. *§ 405.1625–1 [Amended]*

Section 405.1625–1 is amended by removing the reference to § 405.133.

3. *§ 405.1629 [Amended]*

Section 405.1629 is amended by substituting "must" for "should" wherever it appears.

4. Section 405.1632 is revised to read as follows:

§ 405.1632 Posthospital SNF care: Certification and recertification.

(a) *General provisions.* As a condition for Medicare Part A payment for posthospital SNF care furnished in a SNF or in a hospital with a swing-bed approval, the requirements of this section must be met. As used in this section, the term "facility" means either a SNF, or a hospital that has approval to furnish SNF care.

(b) *Content of certification.* A physician must certify that—

(1) Posthospital SNF care is or was required because the individual needs or needed on a daily basis skilled nursing care (furnished directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services that, as a practical matter, can only be provided in a SNF or a swing-bed hospital on an inpatient basis.

(2) The SNF care is or was needed for a condition for which the individual received inpatient care in a participating hospital or a qualified hospital, as defined in § 409.3 of this chapter.

(c) *Timing of certification.* The certification must be obtained at the time of admission or as soon thereafter as is reasonable and practicable.

(d) *Content of recertification.* The recertification statement must certify continued need for services and contain the following information:

(1) An adequate explanation of the reasons for the continued need for SNF care.

(2) The estimated period of time the individual will need to remain in the facility.

(3) Plans for home care, if appropriate.

(4) If the continued need for SNF care is for a condition that arose after the individual's transfer to the facility and while he or she was still in the facility for treatment of a condition for which he or she had received inpatient hospital services, a statement to that effect.

(e) *Timing of recertification.*—(1) *Initial recertification.* The first recertification is required no later than the 14th day of SNF care. A facility, may, at its option, provide for an earlier date or vary the timing of the first recertification within the 14-day period, by diagnostic or clinical categories.

(2) *Subsequent recertifications.* Subsequent recertifications are required at least every 30 days, and may be made at shorter intervals established by the utilization review committee and the facility.

(3) *Recertification requirement fulfilled by UR.* At the option of the facility, extended stay review under the facility's UR plan may take the place of the second and subsequent physician recertifications.

(4) *Description of procedures.* The facility must have available in its files a written description of its procedures for timing of recertifications—that is, the intervals at which recertifications are required, and whether review of extended stay cases by the UR committee takes the place of the second and subsequent physician recertifications.

(f) *Signature of certifications and recertifications.* Certifications and recertifications must be signed by the physician responsible for the case or, if authorized by the responsible physician, by a physician on the staff of the facility, or the physician who is available in case of an emergency and who has knowledge of the case.

4. Section 405.1634 is amended by revising paragraph (a)(3), adding (a)(4) and (a)(5), revising paragraph (b) to incorporate the content of § 405.250–1, and redesignating and revising paragraph (b)(2) as (c). As amended, § 405.1634 reads as follows:

§ 405.1634 Medical and other health services furnished by a participating provider or ESRD facility: Certification and recertification.

(a) *Basic rules.*

* * * * *

(3) *Documentation.* The certification may be made on a record retained by the provider or facility, or on a special form, or a physician's written order may be accepted as certification.

(4) *Signature.* (i) For outpatient physical therapy and speech pathology services for which the plan is established by a physician, the certification must be signed by the physician who establishes the plan.

(ii) For outpatient physical therapy and speech pathology services for which the plan is established by a physical therapist or speech pathologist, and for all other services not specified in paragraph (a)(4)(i) of this section, the certification must be signed by a physician who has knowledge of the case.

(5) *Timing.* (i) For outpatient physical therapy and speech pathology services, the certification statement must be obtained at the time the plan of treatment is established or as soon thereafter as possible.

(ii) For other services, the certification statement may be obtained at the time the services are furnished or, if they are furnished on a continuing basis, at the beginning or at the end of a series of visits.

(b) *Content of certification: Outpatient physical therapy and speech pathology services.* With respect to outpatient physical therapy and speech pathology services, the physician must certify that—

(1) The individual needs or needed physical therapy or speech pathology services;

(2) The services are furnished under a written plan of treatment that meets the following requirements:

(i) A physician, or the speech pathologist who will furnish the speech pathology services, or the physical therapist who will furnish the physical therapy services, establishes a written plan before treatment is begun, and promptly signs it.[3]

(ii) The plan prescribes the type, amount, frequency, and duration of the services to be furnished and specifies the diagnosis and anticipated goals.

(iii) The plan is reviewed periodically by a physician as often as the patient's condition requires, but at least as often as the physician recertifies the continued need for services. Each review is dated and initialed by the physician who performs it.

(iv) Any changes in the plan are made by the physician directly or through orders given to a staff physician, or a registered nurse, or a qualified physical therapist or speech pathologist (as appropriate), and promptly entered in the patient's record and signed.

(3) The services are furnished while the individual is under the care of a physician. For physical therapy services, a doctor of podiatric medicine is considered a physician, if the

[3] Before January 1981, only a physician could establish a plan of treatment for speech pathology services. Speech pathologists were authorized to establish plans effective July 1, 1981; occupational therapists, effective July 18, 1984.

requirements of § 405.1633(a)(1)(iii) are met.[4]

(c) Content of certification: Home dialysis support services. With respect to home dialysis support services, a physician must certify that the services are furnished in accordance with a written plan of treatment established and periodically reviewed by a team that includes the patient's physician and other professionals familiar with the patient's condition.

III. PART 408—MEDICARE ELIGIBILITY AND ENTITLEMENT

A. The table of contents and the authority citation are amended as set forth below:

1. The Subpart A title is revised to read: "Subpart A—Hospital Insurance Eligibility and Entitlement: General Provisions".

2. The undesignated heading immediately preceding § 408.10 is revised to read: "Subpart B—Hospital Insurance Without Premiums".

3. The undesignated heading immediately preceding § 408.20 is revised to read: "Subpart C—Premium Hospital Insurance".

4. The undesignated heading immediately preceding § 408.30 is revised to read: "Subpart D—Special Circumstances that Affect Entitlement to Hospital Insurance".

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

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

B. The text of Part 408 is amended as set forth below:

1. *Subparts B, C, and D—[Headings added]*

The undesignated headings preceding §§ 408.10, 408.20 and 408.30 are removed, and §§ 408.10 through 408.13 are designated as Subpart B—Hospital Insurance Without Premiums, §§ 408.20 through 408.26 are designated as Subpart C—Premium Hospital Insurance, and §§ 408.30 and 408.31 are designated as Subpart D—Special Circumstances that Affect Entitlement to Hospital Insurance.

2. *§ 408.2 [Amended]*

In the first line, "Subparts A through D of this part" is substituted for "This subpart".

3. *§ 408.5 [Amended]*

In paragraphs (a)(3) and (b), "Subpart B of this part" is substituted for "Sections 408.10 through 408.13" and "§§ 408.10 through 408.13" respectively.

4. *§ 408.6 [Amended]*

In § 408.6(d)(4), the phrase "under § 408.10 that is" is inserted immediately after "application".

5. *§ 408.11 [Amended]*

In § 408.11(b)(3), "3 months" is changed to "third month".

6. *§ 408.20 [Amended]*

In paragraphs (a) and (b)(3), "Subpart B of this part"is substituted for "§§ 408.10 through 408.13".

IV PART 409—MEDICARE BENEFITS, LIMITATIONS, AND EXCLUSIONS

A. The table of contents and authority citation of Part 409 are amended as set forth below:

1. The Subpart A title is revised to read: Subpart A—Hospital Insurance Benefits: General Provisions.

2. The undesignated heading immediately preceding § 409.10 is revised to read: Subpart B—Inpatient Hospital Care.

3. The undesignated heading immediately preceding § 409.20 is revised to read: "Subpart C—Posthospital SNF Care".

4. The undesignated heading immediately preceding § 409.30 is revised to read: "Subpart D—Requirements for Coverage of Posthospital SNF Care".

5. The undesignated heading immediately preceding § 409.40 is revised to read: "Subpart E—Home Health Services Under Hospital Insurance".

6. The undesignated heading immediately preceding § 409.60 is revised to read: "Subpart F—Scope of Hospital Insurance Benefits".

7. The undesignated heading immediately preceding § 409.80 is revised to read: "Subpart G—Hospital Insurance Deductibles and Coinsurance".

8. The authority citation is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise noted.

B. The text of Part 409 is amended as set forth below:

1. *§ 409.2 [Amended]*

In the first line, "Subparts A through G of this part" is substituted for "This subpart".

2. *§ 409.3 [Amended]*

In the first line, "part" is substituted for "subpart".

3. *§ 409.10 [Amended]*

In paragraph (a), "set forth in this subpart" is substituted for "paragraph (b) of this section and in §§ 409.11 through 409.19".

4. *§ 409.12 [Amended]*

In § 409.12, the phrase "Except as provided in paragraph (b) of this section," is inserted at the beginning of paragraph (a), paragraphs (b) and (c) are removed, and a new paragraph (b) is added to read as follows:

* * * * *

(b) *Exception.* Medicare does not pay for the services of a private duty nurse or attendant. An individual is not considered to be a private duty nurse or attendant if he or she is a hospital employee at the time the services are furnished.

5. *§ 409.20 [Amended]*

In paragraph (a), "this subpart and Subpart D of this part" is substituted for "paragraph (b) of this section and §§ 409.22 through 409.35".

6. *§ 409.27 [Amended]*

In § 409.27, "they are" is inserted immediately after "if".

7. *§ 409.35 [Amended]*

In § 409.35(a), "$100" is changed to "$500".

8. *§ 409.41 [Amended]*

In paragraph (a), "Subpart B of this part" is substituted for §§ 409.11 through 409.18".

9. *§ 409.42 [Amended]*

a. In paragraph (b)(3), a comma is substituted for the word "or", and "or podiatric medicine" is inserted before the semicolon.

b. In paragraph (b)(3), second sentence, the word "continued" is removed.

10. *§ 409.60 [Amended]*

In paragraph (b), "Subpart G of this part" is substituted for "§§ 409.82 through 409.87".

11. *§ 409.68 [Amended]*

a. In the table of contents, in the heading for § 409.68, "before" is substituted for "prior to".

b. In paragraph (a), "Available benefit days" is substituted for "coverage days".

c. In paragraph (a)(1), "available benefit days" is substituted for "available days of coverage".

d. In paragraph (a)(2), "available benefit days" is substituted for "available days of coverage".

e. In paragraph (b)(1), the first "plus" is removed.

V. PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

A. The authority citation is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

B. The text of Part 442 is amended as set forth below:

[4] For the specified purpose, a doctor of podiatric medicine is considered a physician effective July 16, 1984.

1. Section 442.311(e) is revised to read as follows:

§ 442.311 Written policies and procedures: Residents bill of rights.

* * * * *

(e) *Financial affairs.*

The ICF must comply with the requirements specified in § 405.1121(m) of this chapter with respect to the protection of patients' personal funds.

* * * * *

2. The Effective Date Note and the small print paragraph (e) at the end of § 442.311 are removed.

3. The Effective Date Note that follows § 442.320 is removed.

4. Section 442.404(e) is revised to read as follows:

§ 442.404 Residents bill of rights.

* * * * *

(e) *Financial affairs.*

Each resident's personal funds must be protected in accordance with the requirements of § 405.1121(m) of this chapter.

* * * * *

5. The Effective Date Note and the small print paragraph 442.404(e) at the end of § 442.404 are removed.

6. Section 442.406 is revised to read as follows:

§ 442.406 Resident finances.

(a) Each resident must be allowed to possess and use money in normal ways or be learning to do so.

(b) The ICF/MR must comply with the requirements specified in § 405.1121(m) of this chapter with respect to the protection of patients' funds.

7. The Effective Date Note and the small print § 442.406 at the end of § 442.406 are removed.

VI. PART 456—UTILIZATION CONTROL

A. The authority citation for Part 456 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

B. *§ 456.360 [Amended]*

In paragraphs (b)(2)(i) and (b)(2)(ii), the word "an" is substituted for "a public".

VII. PART 481—CERTIFICATION OF CERTAIN HEALTH FACILITIES

A. The authority citation for Part 481 is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

B. Part 481 is redesignated as Part 491 with no change in content, and all current references throughout Title 42 to Part 481 are changed to refer to Part 491

VIII. PART 488—CONDITIONS OF PARTICIPATION; SPECIALIZED PROVIDERS

A. The authority citation for Part 488 continues to read as follows:

Authority: Secs. 1102, 1861aa, 1861cc, and 1971 of the Social Security Act: 42 U.S.C. 1302 1395x, and 1395hh.

B. Part 488 is redesignated as Part 485, with no change in content, and all current references throughout Title 42 to Part 488 are corrected to refer to Part 485.

C. In redesignated Part 485, § 485.70(g) is revised to read as follows:

§ 485.70 Personnel qualifications.

* * * * *

(g) A *psychologist* must be certified or licensed by the State in which he or she is practicing, if that State requires certification or licensing, and must hold a masters degree in psychology from and educational institution approved by the State in which the institution is located.

* * * * *

(Catalog of Federal Domestic Assistance, Program No. 13.714, Medical Assistance Program; No 13.773, Medicare—Hospital Insurance; and Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: April 25, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: June 24, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-19601 Filed 8-15-85; 8:45 am]

BILLING CODE 4120-01-M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins and Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Hoechst Corp., providing for safe and effective use of a complete broiler feed manufactured with separately approved bambermycins and monensin premixes. The feed is used for prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: American Hoechst Corp., Animal Health Division, Route 202-206 North, Somerville, NJ 08876, filed a supplement to NADA 98-340 providing for use of bambermycins at 1 to 2 grams per ton in combination with monensin 90 to 110 grams per ton in complete broiler feeds. The feeds are used for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima* and for increased rate of weight gain and improved feed efficiency. The supplemental NADA is approved and the regulations are amended accordingly. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.95 by revising the introductory text of paragraph (e)(1)(vi) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(e) * * *

(1) * * *

(vi) *Amount per ton.* Bambermycins, 1 to 2 grams plus monensin, 90 to 110 grams.

* * * * *

3. In § 558.355 by revising paragraph (f)(1)(vi) to read as follows:

§ 558.355 **Monensin.**

* * * * *

(f) * * *

(1) * * *

(vi) *Amount per ton.* Monensin, 90 to 110 grams plus bambermycins, 1 to 2 grams. See § 558.95(e)(1)(vi).

* * * * *

Dated: August 9, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-19512 Filed 8-15-85; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2617

Determination of Plan Sufficiency and Termination of Sufficient Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on determination of plan sufficiency that appeared at page 31167 in the **Federal Register** of Thursday, August 1, 1985 (50 FR 31167). This action is needed to correct typographical and editorial errors in cross references.

FOR FURTHER INFORMATION CONTACT: Mrs. Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202-254-4856 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 85-18269 appearing at 31167 in the issue of August 1, 1985:

§ 2617.12 **[Corrected]**

On page 31170, column two, in § 2617.12 (d), "paragraph (b)" is corrected to read "paragraph (a)" and the phrase "or, if applicable, paragraph (c) of this section" is removed.

David M. Walker,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-19505 Filed 8-15-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 581

Army Discharge Review Board

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: On August 26, 1982, the Department of Defense published 32 CFR Part 70 in the **Federal Register**, which provided guidance to the military departments on the procedures and standards for the Discharge Review Boards. The guidelines were intended to ensure that applicants to the DRBs of the Military Services are fully aware of the proper procedures for submitting an application for discharge review and the conduct of the review. The rule being published today is the Army Discharge Review Board's implementing regulations.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Matthews, Deputy Assistant Secretary (DA Review Boards, Personnel Security and Equal Employment Opportunity Compliance and Complaints Review) Room 1E520, Pentagon, Washington, D.C. 20310 Phone: 202-697-9641.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1982 the Department of the Defense, acting through the Director of the Department of the Army Military Review Boards Agency, published in the **Federal Register** 32 CFR Part 70. This final rule is the Army's implementation of 32 CFR Part 70.

This rule governs the actions and composition of the Army Discharge Review Board (ADRB) under Pub. L. 95-126; Title 10, United States Code (U.S.C.) section 1553; and Department of Defense (DOD) Directive 1332.28. It governs applications and ADRB motions for discharge review, public inspection copying, and distribution of ADRB documents through the Armed Forces Discharge Review/Correction Board Reading Room; preparing decisional documents and index entries; and processing complaints regarding them.

Executive Order 12291

The Department of the Army has determined that this document does not meet the criteria for a "major rule" as specified in section I (8) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

The Department of the Army has determined that Pub. L. 96-354, 5 U.S.C. 601 et seq. does not apply.

Paperwork Reduction Act

The Department of the Army has determined that this document does not contain information collections that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 32 CFR Part 581

Administrative practice and procedure, Archives and records, Disability benefits, Military personnel.

PART 581—[AMENDED]

Accordingly, 32 CFR Part 581 is amended as set forth below:

1. The authority citation for Part 581 is revised to read as set forth below, and any other authority citation appearing under any section in Part 581 is removed.

Authority: 10 U.S.C. 1552, 1553, 1554, 3012; 38 U.S.C. 3103a.

2. Part 581 is amended by revising § 581.2 to read as follows:

§ 581.2 **Army Discharge Review Board.**

(a) *Purpose.*—This regulation implements 10 U.S.C. 1553, Pub. L. 95-126, and DOD Directive 1332.28 (app. A).

(b) *Explanation of terms.*—(1) *Legal consultant of the Army Discharge Review Board (ADRB).* An officer of The Judge Advocate General's Corps assigned to the ADRB to provide opinions and guidance on legal matters relating to ADRB functions.

(2) *Medical consultant of the ADRB.* An officer of the Army Medical Corps assigned to the ADRB to provide opinions and guidance on medical matters relating to ADRB functions.

(3) *Video tape hearing.* A hearing conducted by an ADRB hearing examiner at which an applicant is given the opportuntiy to present his/her appeal to the hearing examiner, with the entire presentation, including cross-examination by the hearing examiner, recorded on video tape. This video tape presentation is later displayed to a full ADRB panel. Video tape hearings will be conducted only with the consent of the applicant and with the concurrence of the President of the ADRB.

(c) *Composition and responsibilities.*—(1) *Authority.* The ADRB is established under Pub. L. 95-126 and 10 U.S.C. 1553 and is responsible for the implementation of the Discharge Review Board (DRB) procedures and standards within DA.

(2) *The ADRB president.* The president is designated by the Secretary of the Army (SA). The President—

(i) Is responsible for the operation of the ADRB.

(ii) Prescribes the operating procedures of the ADRB.

(iii) Designates officers to sit on panels.

(iv) Schedules panels to hear discharge review appeals.

(v) Monitors the DOD directed responsibilities of the SA on service discharge review matters for the DOD.

(3) *ADRB panels and members.* The ADRB will have one or more panels. Each panel, when in deliberation, will consist of five officers. The senior officer (or as designated by the president ADRB) will act as the presiding officer.

(4) *Secretary Recorder (SR) Branch.* The Chief, SR—

(i) Ensures the efficient overall operation and support of the ADRB panels.

(ii) Authenticates the case report and directives of cases heard.

(5) Secretary Recorder. The SR is an officer assigned to the SR Branch whose duties are to—

(i) Schedule, coordinate, and arrange for panel hearings at a designated site.

(ii) Administer oaths to applicants and witnesses under Article 136 UCMJ.

(iii) Ensure that the proceedings of the cases heard and recorded into the case report and directive of cases.

(6) Administrative Specialist. An Administrative Specialist is an enlisted member assigned to the SR Branch whose duties are to—

(i) Assist the SR in arranging panel hearings.

(ii) Operate and maintain video and voice recording equipment.

(iii) Aid the SR in the administrative operations of the panels.

(7) *Administrative personnel.* Such administrative personnel as are required for the proper functions of the ADRB and its panels will be furnished by the SA.

(d) *Special standards.*—(1) Under the November 27, 1979, order of the United States District Court for the District of Columbia in "Giles v. Secretary of the Army" (Civil Action No. 77-0904), a former Army service member is entitled to an honorable discharge if a less than honorable discharge was issued to the service member who was discharged before 1 January 1975 as a result of an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purpose of entry into a treatment program or to monitor progress through rehabilitation or follow up).

(2) Applicants who believe they fall within the scope of paragraph (d)(1) of this section should place the work CATEGORY "G" in block 7, DD Form 293, (Application for Review of Discharge or Dismissal from the Armed Forces of the United States). Such applications will be reviewed expeditiously by a designated official who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (d)(1) of this section or forward the application to the ADRB if the individual does not fall within the scope of paragraph (d)(1) of this section. The action of the designated official will not constitute an action or decision by the ADRB.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-19322 Filed 8-15-85; 8:45 am]

BILLING CODE 3710-08-M

POSTAL SERVICE

39 CFR Part 775

Amendments to Environmental Procedures and Floodplain Management and Protection of Wetlands Procedures

Correction

In FR Doc. 85-19061 appearing on page 32411 in the issue of Monday, August 12, 1985, make the following correction:

In the first column, fifth line from the bottom, "775.5" should read "775.6".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[SC-008; A-4-FRL-2882-1]

South Carolina: Revision in 111(d) Plan for TRS From Existing Kraft Pulp Mills; Negative Declaration for Primary Aluminum Plants

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving a source-specific revision in South Carolina's 111(d) plan for total reduced sulfur (TRS) emissions from existing kraft pulp mills. On December 13, 1984, the State submitted a revised emission standard and an extended compliance schedule for two emission points at Stone Container Corporation's Florence mill which are presently exceeding TRS emission standards. The submittal included economic and technical information justifying the new limit and compliance schedule. The approval of this 111(d) plan revision is consistent with EPA policy on welfare-related pollutants.

EPA is also taking action on a negative declaration made by the State of South Carolina. On May 3, 1983, South Carolina certified that there were no primary aluminum plants in the State which were subject to the requirements of section 111(d) of the Clean Air Act. All States are required to adopt control plans for designated facilities, or certify that a plan is unnecessary because no such facilities exist in the State. EPA is now approving South Carolina's negative declaration for primary aluminum plants.

EFFECTIVE DATE: These actions are effective September 16, 1985.

ADDRESSES: Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV Office, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Management Branch, at the above address and following phone: 404/881-3286, or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On Decmeber 13, 1984, the South Carolina Department of Health and Environmental Control (SCDHEC) submitted a 111(d) plan revision for Stone Container which included alternate emission limits for the digesters and an extended compliance schedule for the evaporator hotwell vents. Complete documentation justifying the State's proposed plan revision was included in the submittal.

The digester system at Stone Container's mill is presently subject to a TRS regulation emission standard of 5 ppm (.02 lb TRS per ton of air-dried pulp). The State is relaxing this allowable limit to 1847 ppm, or .29 lb TRS per ton of air-dried pulp (TADP). This represents current actual emission levels at the digester vents. The new regulation standard permits a change in allowable TRS emissions of

approximately 66 tons per year, or about 16 pounds per hour. EPA presently allows emission limit relaxations for welfare pollutant sources if it can be demonstrated that control costs are unreasonable.

The evaporator hot-well vents at the Stone Container facility are presently emitting .39 lb TRS/TADP, which is above their regulation emission limit of .02 lb TRS/TADP (5 ppm). The company plans to construct a TRS incineration system which would bring the evaporator system into compliance with regulation standards. Final compliance will be required forty-nine weeks from today. Under South Carolina air regulations, a source may request an alternate compliance schedule if adherence to the existing schedule is not technically feasible.

Except for the evaporators and digesters, all significant TRS emission points at Stone Container's Florence mill are being controlled to guideline levels. The State has submitted information justifying the company's plans to bring these two sources into compliance.

Stone Container Corporation has documented that the digesters are already emitting low levels of TRS (20 percent of the typical uncontrolled levels) and that the estimated costs to control the digesters at their Florence mill would be $2.48 per ton of air-dried pulp. The company has also modeled the total TRS emissions from their mill to determine the air quality impact of this plan revision. Modeled concentrations at selected population points three to ten miles from the mill were below detectible threshold levels. The company has also substantiated their request for an alternate digester emission limit by such factors as rural mill location and lack of public complaints.

The company has agreed to control TRS emissions from the evaporator hot-well vents by incinerating the noncondensable gases in an existing power boiler. A new compliance schedule was submitted to EPA which would allow the evaporators, and thus the entire mill, to be in compliance with regulatory TRS standards forty-nine weeks after the plan revision is approved by EPA.

EPA has reviewed this documentation and has found that the State's request is adequately justified by economic, technical, and other related criteria. Proposed approval of this 111(d) plan revision was published in the **Federal Register** on April 17, 1985 (50 FR 15186). Only one comment was received on the proposed action. The letter from Stone Container Corporation expressed total support for the TRS plan revision and urged EPA approval without further modification. EPA is therefore taking final approval action on the emission limit relaxation and extended compliance schedule as submitted by South Carolina for Stone Container Corporation.

In addition, South Carolina is required to submit a 111(d) plan for the control of fluoride emissions from existing primary aluminum plants. Since there are no facilities of this type in the State, the State must submit a letter to that effect (negative declaration). The absence of such plants in the State was certified by a letter from John E. Jenkins, P.E., Deputy Commissioner for Environmental Quality Control, to Mr. Charles R. Jeter, Regional Administrator, on May 3, 1983. EPA proposed to approve South Carolina's negative declaration for primary plants on April 17, 1985 (50 FR 15186); today EPA is announcing final approval of that negative declaration.

Final Action

Based on the above information, EPA is approving the § 111(d) TRS plan revision for Stone Container Corporation, as submitted by South Carolina on December 13, 1984. EPA is also approving the State's negative declaration for existing primary aluminum plants.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur.

Dated: August 7, 1985.

Lee M. Thomas,

Administrator.

Part 62 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart PP—South Carolina

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 62.10100 is amended by adding a new paragraph (b)(2) as set forth below:

§ 62.10100 Identification of plan.

* * * * *

(b) * * *

(2) A revision to South Carolina's 111(d) plan for total reduced sulfur which was submitted on December 13, 1984. This revision approved an alternate emission limit for the digesters and an extended compliance schedule for the evaporators at Stone Container Corporation.

3. Section 62.10120 is amended by revising paragraph (4) as follows:

§ 62.10120 Identification of sources.

* * * * *

(4) Stone Container Corporation in Florence.

4. Section 62.10140 and a new center heading are added as follows:

Fluoride Emissions From Existing Primary Aluminum Reduction Plants

§ 62.10140 Identification of Plan—Negative declaration.

The South Carolina Department of Health and Environmental Control submitted on May 3, 1983, a letter certifying that there are no existing primary aluminum plants in the State which are subject to Part 60, Subpart B, of this Chapter.

[FR Doc. 85–19427 Filed 8–15–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 150

[CGD 83–047]

Compatibility of Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: 46 CFR Part 150 contains requirements for compatible stowage of bulk liquid hazardous materials on tank vessels. This final rule updates 46 CFR Part 150 by adding recently authorized exceptions to the Compatibility Chart and cargoes approved for carriage since the final rule was published on April 14, 1983 (48 FR 16059). This final rule also incorporates CHRIS codes into Table 1, corrects typographical errors, specifies reactivity differences within chemical groups, and deletes descriptive phrases, such as, "inhibited", "stabilized", and "%" when these have no effect on the compatibility classification of the material. (CHRIS codes are three letter codes that have been assigned to every chemical contained in the Coast Guard's Chemical Hazards Response Information System (CHRIS).)

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Michael C. Parnarouskis, (202) 426–1577.

SUPPLEMENTARY INFORMATION: On January 11, 1985 (50 FR 1551), the Coast Guard published a notice of proposed rulemaking. Interested persons were given a deadline of February 11, 1985 for submission of written comments. A public hearing was to be scheduled if requested by anyone raising a genuine issue. No request for a public hearing has been received. However, comments were received that brought attention to a few editorial changes, and these are included in this final rule. It should be noted that the Compatibility Chart, and its authorized exceptions and companion Tables, listing chemicals alphabetically and by group, will be updated periodically as the Coast Guard approves new chemical cargoes for carriage.

Several changes are made to correct typographical errors of no substantive effect.

Regulatory Evaluations

These regulations are considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

The addition of commodities to the Tables in Part 150 neither authorizes nor prohibits the carriage of a particular cargo. Authorized cargoes are listed in 46 CFR 30.25, 46 CFR 151.01–10, Table I of 46 CFR 153, Appendix I of 46 CFR 154, and Appendices A and B of 46 CFR 154a. The regulations in Part 150 identify those cargoes which are not compatible and prescribe minimum standards for keeping incompatible cargoes separated while being carried, thus, the rules in this part have only minimal economic impact. Because the economic impact of this final rule has been found to be so minimal, further evaluation is unnecessary.

Regulatory Flexibility Act

Since the economic impact of this final rule is expected to be minimal, in accordance with paragraph 605(d) of the Regulatory Flexibility Act (94 Stat 1164), the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 46 CFR Part 150

Hazardous materials transportation.

Accordingly, Part 150 of Title 46 of the Code of Federal Regulations is amended as follows:

1. By revising the Part heading to read as follows:

PART 150—COMPATIBILITY OF CARGOES

2. By revising the authority citation for Part 150 to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46.

3. By revising § 150.120 to read as follows:

§ 150.120 Definition of incompatible cargoes.

Except as described in § 150.150, a cargo of hazardous material is incompatible with another cargo listed in Table I if the chemical groups of the two cargoes have an "X" where their columns intersect in Figure 1 and are not shown as exceptions in Appendix I. (See also § 150.140.)

4. By revising § 150.140 to read as follows:

§ 150.140 Cargoes not listed in Table I or II.

A cargo of hazardous material not listed in Table I or II must be handled as if incompatible with all other cargoes until the Commandant (G–MTH) (tel. no. (202) 426–1577) assigns the hazardous material to a compatibility group. (Table I lists cargoes alphabetically while Table II lists cargoes by compatibility group).

5. By revising § 150.150 to read as follows:

§ 150.150 Exceptions to the Compatibility Chart.

The Commandant (G–MTH) authorizes, on a case by case basis, exceptions to the rules in this subpart under the following conditions:

(a) when two cargoes shown to be incompatible in Figure 1 meet the standards for a compatible pair in Appendix III, or

(b) when two cargoes shown to be compatible in Figure 1 meet the standards for an incompatible pair in Appendix III.

Appendix I contains cargoes which have been found to be exceptions to Figure 1, the Compatibility Chart.

6. By revising the introductory text of § 150.160 to read as follows:

§ 150.160 Carrying a cargo as an exception to the Compatibility Chart.

The Operator of a vessel having on board a cargo carried as an exception under § 150.150 but not listed in Appendix I, Exceptions to the Chart, shall make sure that—

* * * * *

7. By revising the Figure 1—Compatibility Chart to read as follows:

BILLING CODE 4910-14-M

Figure 1.—Compatibility Chart

CARGO COMPATIBILITY / CARGO GROUPS / REACTIVE GROUPS	1. NON-OXIDIZING MINERAL ACIDS	2. SULFURIC ACID	3. NITRIC ACID	4. ORGANIC ACIDS	5. CAUSTICS	6. AMMONIA	7. ALIPHATIC AMINES	8. ALKANOLAMINES	9. AROMATIC AMINES	10. AMIDES	11. ORGANIC ANHYDRIDES	12. ISOCYANATES	13. VINYL ACETATE	14. ACRYLATES	15. SUBSTITUTED ALLYLS	16. ALKYLENE OXIDES	17. EPICHLOROHYDRIN	18. KETONES	19. ALDEHYDES	20. ALCOHOLS, GLYCOLS	21. PHENOLS, CRESOLS	22. CAPROLACTAM SOLUTION		
1. NON-OXIDIZING MINERAL ACIDS		X			X	X	X	X	X	X	X	X	X			X	X							1
2. SULFURIC ACID	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		2
3. NITRIC ACID		X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			3
4. ORGANIC ACIDS		X			X	X	X	X				X				X	X							4
5. CAUSTICS	X	X	X	X							X	X				X	X		X	X	X	X		5
6. AMMONIA	X	X	X	X						X	X	X	X			X	X		X					6
7. ALIPHATIC AMINES	X	X	X	X							X	X	X	X	X	X	X	X	X	X	X	X		7
8. ALKANOLAMINES	X	X	X	X							X	X	X	X	X	X	X		X					8
9. AROMATIC AMINES	X	X	X								X	X							X					9
10. AMIDES	X	X	X			X						X									X			10
11. ORGANIC ANHYDRIDES	X	X	X		X	X	X	X	X															11
12. ISOCYANATES	X	X	X	X	X	X	X	X	X	X										X		X		12
13. VINYL ACETATE	X	X	X			X	X	X																13
14. ACRYLATES		X	X				X	X																14
15. SUBSTITUTED ALLYLS		X	X				X	X																15
16. ALKYLENE OXIDES	X	X	X	X	X	X	X	X																16
17. EPICHLOROHYDRIN	X	X	X	X	X	X	X	X																17
18. KETONES		X	X				X																	18
19. ALDEHYDES		X	X		X	X	X	X	X															19
20. ALCOHOLS, GLYCOLS		X	X		X		X					X												20
21. PHENOLS, CRESOLS		X	X		X		X			X														21
22. CAPROLACTAM SOLUTION		X			X		X					X												22
30. OLEFINS		X	X																					30
31. PARAFFINS																								31
32. AROMATIC HYDROCARBONS			X																					32
33. MISCELLANEOUS HYDROCARBON MIXTURES			X																					33
34. ESTERS		X	X																					34
35. VINYL HALIDES			X																			X		35
36. HALOGENATED HYDROCARBONS																								36
37. NITRILES		X																						37
38. CARBON DISULFIDE							X	X																38
39. SULFOLANE																								39
40. GLYCOL ETHERS		X										X												40
41. ETHERS		X	X																					41
42. NITROCOMPOUNDS					X	X	X	X	X															42
43. MISCELLANEOUS WATER SOLUTIONS		X										X												43
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22		

BILLING CODE 4910-14-C

8. By revising Table I, including the footnote, as follows:

TABLE I—ALPHABETICAL LIST OF CODES

Chemical name	Group No.	Chris code	Related Chris codes
Acetaldehyde	19	AAD	
Acetic acid	4	AAC	
Acetic anhydride	11	ACA	
Acetone	18	ACT	
Acetone cyanohydrin	*[2]0	ACY	
Acetonitrile	37	ATN	
Acetophenone	18	ACP	
Acetyl tributyl I citrate	34		
Acrolein	[2]19	ARL	
Acrylamide solution	10	AAM	
Acrylic acid	[2]4	ACR	
Acrylonitrile	[2]15	ACN	
Adiponitrile	37	ADN	
Alcohols (mixed)	20		
Alkyl benzene sulfonic acid	*[1][2]0	ABS	
Alkyl phthalates	34		
Allyl alcohol	[2]15	ALA	
Allyl chloride	15	ALC	
2-(2-Aminoethoxy)ethanol	8	AEX	
Aminoethylethanolamine	8	AEE	
N-Aminoethylpiperazine	*7	AEP	
2-Amino-2-methyl-1-propanol	*8	APR	
Ammonia, anhydrous	6	AMA	
Ammonium bisulfite solution	*43(2)		ASU
Ammonium hydroxide (28 pct. or less Ammonia).	6	AMH	
Ammonium nitrate, Urea solution (containing Ammonia).	6	UAS	
Ammonium nitrate, Urea solution (not containing Ammonia).	43	ANU	
Ammonium polyphosphate solution.	43		
Ammonium sulfate solution	43		AMS
Ammonium sulfide solution	*5	ASS	
Amyl acetate	34		IAT/AML/AAS/AYA
Amyl alcohol	20		IAA/AAN
Amylene	*30		
Amyl methyl ketone	*18	AMK	
Amyl tallate	34		
Aniline	9	ANL	
Asphalt	33	ASP	
Asphalt blending stocks, roofers flux.	33	ARF	
Asphalt blending stocks, straight run residue.	33	ASR	
Behenyl alcohol	20		
Benzene	32	BNZ	
Benzene, Hydrocarbon mixtures (10 pct. Benzene or more).	*32	BHB	
Benzenesulfonyl chloride	*[2]0	BSC	
Benzene, Toluene, Xylene mixtures.	32	BTX	
Benzyl alcohol	*21	BAL	
Benzyl chloride	*36	BCL	
Butadiene	30	BDI	
Butadiene, Butene mixtures (cont. Acetylenes).	*30	BBM	
Butane	31	BMX	IBT/BUT
Butene	30	BTN	IBL
Butyl acetate	34		IBA/BCN/BTA/BYA
Butyl acrylate	14	BAR	BAI/BTC
Butyl alcohol	20		IAL/BAN/BAS/BAT
Butylamine	7	BTY	IAM/BAM/BTL/BUA
Butyl benzyl phthalate	34	BPH	
Butylene	30		BTN/IBL
Butylene glycol	[2]20		
Butylene oxide	16	BTO	
Butyl ether	41	BTE	
Butyl formate	*34	BFN	BFI
Butyl heptyl ketone	18		
Butyl methacrylate	14	BMH	BMI/BMM
Butyl methacrylate, Decyl methacrylate, Cetyl eicosyl methacrylate mixture.	14	DER	

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Butyraldehyde	19	BAE	BAD/BTR/BFA
Butyric acid	4	BFA	
gamma-Butyrolactone	*[2]0	BLA	
Calcium bromide solution	43		
Calcium chloride solution	43		CLC
Calcium sulfonate, Calcium carbonate, Hydrocarbon solvent mixture.	*33		
Camphor oil	18	CPO	
Caprolactam solution	22	CLS	
Carbolic oil	21	CBO	
Carbon black base	33		
Carbon disulfide	38	CBB	
Carbon tetrachloride	36	CBT	
Cashew nut shell oil (untreated).	4	OCN	
Caustic potash solution	[2]5	CPS	
Caustic soda solution	[2]5	CSS	
Cetyl eicosyl methacrylate	*14	CEM	
Chlorine	[1]0	CLX	
Chloroacetic acid solution	*4	CHM	CHL/MCA
Chlorobenzene	36	CRB	
Chlorodifluoromethane	*36	MCF	
Chloroform	36	CRF	
Chloronitrobenzene, see o-Nitrochlorobenzene.			CNO/CNP
Chlorosulfonic acid	[1]0	CSA	
Chlorotoluene	*36	CHI	CTM/CTO/CRN
Choline chloride solutions	20		
Corn syrup	43	CSY	
Creosote	21	CCW	CCT/CWD
Cresols	21	CRS	CRL/CSL/CSO
Cresylate spent caustic	5	CSC	
Cresylic acid	21	CRY	
Crotonaldehyde	[2]19	CTA	
Cumene	32	CUM	
Cycloaliphatic resins	31		
Cyclohexane	31	CHX	
Cyclohexane oxidation product acid water.	*4		
Cyclohexanol	20	CHN	
Cyclohexanone	18	CCH	
Cyclohexanone, Cyclohexanol mixtures.	*[2]18	CYX	
Cyclohexylamine	7	CHA	
Cyclopentadiene polymers	30		
Cyclopentadiene, Styrene, Benzene mixtures.	30	CSB	
Cymene	32	CMP	
Decaldehyde	19		IDA/DAL
Decane	31	DDC	
Decene	30	DCE	
Decyl acrylate	14	DAT	IAL/DAR
Decyl alcohol	20		ISA/DAN
Decyl benzene	32	DBZ	
Dextrose solution	43	DTS	
Diacetone alcohol	20	DAA	
Diammonium salt of Zinc EDTA solution.	43	DSZ	
Dibutylamine	7	DBA	
Dibutyl phthalate	34	DPA	
Dichlorobenzene	36		DBM/DBO/DBP
Dichlorodifluoromethane	36	DCF	
1,1-Dichloroethane	36	DCH	
2,2'-Dichloroethyl ether	41	DEE	
2,2'-Dichloroisopropyl ether	36	DCI	
Dichloromethane	36	DCM	
2,4-Dichlorophenol	21	DCP	
Dichloropropane	36	DPX	DPB/DPP/DPC/DPL
1,3-Dichloropropene	15	DPS	DPF/DPU
Dichloropropene, Dichloropropane mixtures.	15	DMX	
2,2-Dichloropropionic acid	4	DCN	
Dicyclopentadiene	30	DPT	
Diethanolamine	8	DEA	
Diethanolamine salt of 2,4-D acid Dichlorophenoxyacetic acid solution.	*43	DZZ	
Diethylamine	7	DEN	
Diethylbenzene	32	DEB	

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Diethylene glycol	40	DEG	
Diethylene glycol monobutyl ether.	40	DME	
Diethylene glycol monobutyl ether acetate.	34	DEM	
Diethylene glycol monoethyl ether.	40	DGE	
Diethylene glycol monomethyl ether.	40	DGM	
Diethylene glycol monophenyl ether.	40		
Diethylenetriamine	7	DET	
Diethylethanolamine	8	DAE	
Di-(ethylhexyl)phthalate	*34		
Diethyl sulfate	34	DSU	
Diglycidyl ether of Bisphenol A.	41	BDE	BPA
Diheptyl phthalate	34	DDHP	
Di-n-hexyl adipate	*34		
Diisobutylamine	*7	DBU	
Diisobutyl carbinol	20	DBC	
Diisobutylene	30	DBL	
Diisobutyl ketone	18	DIK	
Diisodecyl phthalate	34	DID	
Diisononyl adipate	*34		
Diisononyl phthalate	34	DIN	
Diisooctyl phthalate	34	DIO	
Diisopropanolamine	8	DIP	
Diisopropylamine	7	DIA	
Diisopropyl benzene	32		
Diisopropyl naphthalene	32		
Dimethyl acetamide	10	DAC	
Dimethyl adipate	*34		
Dimethylamine	7	DMA	DMC/DMG/DMY
Dimethylamine salt of 2,4-D solution.	*0(2)	DDA	DSX
Dimethylcyclicsiloxane hydrolyzate.	*34		
N,N-Dimethylcyclohexylamine	7	DXN	
Dimethylethanolamine	8	DMB	
Dimethylformamide	10	DMF	
Dimethyl furan	*41		
Dimethyl glutarate	*34		
Dimethyl hydrogen phosphite	*[2]34	DPI	
2,2-Dimethyloctanoic acid	4	DMO	
Dimethyl phthalate	34	DTL	
Dimethyl polysiloxane	34	DMP	
2,2-Dimethylpropane-1,3-diol	20		
Dimethyl succinate	*34		
Dinonyl phthalate	34		
Dioctyl phthalate	34	DOP	
1,4-Dioxane	41	DOX	
Dipentene	30	DPN	
Diphenyl, Diphenyl oxide	*33	DDO	DTH
Diphenylmethane diisocyanate.	12	DPM	
Diphenyl oxide, Diphenyl phenyl ether mixture.	41		
Di-n-Propylamine	7	DNA	
Dipropylene glycol	40	DPG	
Dipropylene glycol dibenzoate.	34		
Distillates, flashed feed stocks.	33	DFF	
Distillates, straight run	33	DSR	
Diundecyl phthalate	34	DUP	
Dodecane	31		
Dodecanol	20	DDN	LAL
Dodecene	30	DOD	DDC
Dodecylamine, Tetradecylamine mixture.	[2]7	DTA	
Dodecylbenzene	32	DDB	
Dodecyl diphenyl oxide disulfonate solution.	43	DOS	
Dodecyl methacrylate	*14	DDM	
Dodecyl, Pentadecyl methacrylate.	14	DDP	
Dodecyl phenol	*21	DOL	
Epichlorohydrin	17	EPC	
Epoxy resin	18		
Ethane	31	ETH	
Ethanolamine	8	MEA	
Ethoxylated alcohols, C11-C15.	20		EOD/ENP/EOP/EOT/ETD

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Ethoxy triglycol	40	ETG	
Ethyl acetate	34	ETA	
Ethyl acetoacetate	*34	EAA	
Ethyl acrylate	14	EAC	
Ethyl alcohol	20	EAL	
Ethylamine	7	EAM	
Ethylamine solution	*7	EAN	
Ethyl benzene	32	ETB	
Ethyl butanol	20	EBT	
N-Ethyl-n-butylamine	7	EBA	
Ethyl butyrate	*34	EBR	
Ethyl chloride	36	ECL	
N-Ethyl cyclohexylamine	*7	ECC	
Ethylene	30	ETL	
Ethylene chlorohydrin	20	ECH	
Ethylene cyanohydrin	20	ETC	
Ethylenediamine	[2]7	EDA	EMX
Ethylene dibromide	36	EDB	
Ethylene dichloride	36	EDC	
Ethylene glycol	20	EGL	
Ethylene glycol monobutyl ether.	40	EGM	
Ethylene glycol monobutyl ether acetate.	34	EMA	
Ethylene glycol monoethyl ether.	40	EGE	
Ethylene glycol monoethyl ether acetate.	34	EGA	
Ethylene glycol monoisopropyl ether.	40		
Ethylene glycol monomethyl ether.	40	EME	
Ethylene glycol phenyl ether	40		
Ethylene oxide	[1]0	EOX	
Ethylene oxide, Propylene oxide mixture.	*16	EPM	
Ethylene, Vinyl acetate copolymer emulsion.	*43		
Ethyl ether	41	EET	
Ethylhexaldehyde	19	EHA	
2-Ethylhexanol	20	EHX	
2-Ethylhexanoic acid	4		
2-Ethylhexyl acrylate	14	EAI	
2-Ethyl hexylamine	7	EHM	
Ethyl hexyl tallate	34	EHT	
Ethylidene norbornene	[2]30	ENB	
Ethyl methacrylate	14	ETM	
2-Ethyl-6-methyl-N-(1-methyl-2-methoxyethyl)aniline.	9	EEM	
Ethyl propionate	*34	EPR	
2-Ethyl-3-propylacrolein	[2]19	EPA	
Fatty acid amides	33		
Formaldehyde, Methanol mixtures.	[2]19		
Formaldehyde solution	19	FMS	
Formamide	*10	FAM	
Formic acid	4	FMA	
Furfural	19	FFA	
Furfuryl alcohol	20(2)	FAL	
Gas oil, cracked	33	GOC	
Gasoline blending stock, alkylates.	33	GAK	
Gasoline blending stock, reformates.	33	GRF	
Gasolines:			
Automotive (not over 4.23 grams lead per gal.).	33	GAT	
Aviation (not over 4.86 grams lead per gal).	33	GAV	
Casinghead (natural)	33	GCS	
Polymer	33	GPL	
Straight run	33	GSR	
Glutaraldehyde solution	19	GTA	
Glycerine	20	GCR	
Glyceryl triacetate	34		
Glycidyl ester of Versatic acid.	34		
Glycol diacetate	34		
Glycols, Resins, and Solvents mixture.	33		
Glyoxal solutions	19	GOS	
Heptane	31	HPT	
n-Heptanoic acid	4	HEP	
Heptanol	*20	HTN	
1-Heptene	30	HTE	
Herbicide (C15-H22-N02-Cl)	33		
Hexamethylenediamine solution.	*7	HMC	HMD

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Hexamethylenetetramine	*7	HMT	
Hexamethylenimine	7	HMI	
Hexane	31	HXA	5HA/HXA
Hexanol	20	HXN	
Hexene	30	HXE	
Hexylene glycol	20	HXG	
Hydrochloric acid	1	HCL	
Hydrochloric acid, spent	*1	HCS	
Hydrofluoric acid	1	HFA	
Hydrofluorosilicic acid	1	HFS	
Hydrogen peroxide solutions	[1]0		HPN/ HPS/ HPO
2-Hydroxyethyl acrylate	0(2)	HAI	
Industrial waste (containing Dimethyldisulfied, Methyl mercaptan, and Methomyl).	*32	INW	
Isophorone	[2]18	IPH	
Isoprene	30	IPR	
Jet fuels:			
JP-1	33	JPO	
JP-3	33	JPT	
JP-4	33	JPF	
JP-5	33	JPV	
Kaolin clay slurry	43		
Kerosene	33	KRS	
Ketone residue	*18		
Kraft black liquor	*5		
Latex, liquid synthetic	43	LLS	
Lignin liquor	43		
Magnesium chloride solution	*[1]0		
Magnesium nonyl phenol sulfide.	33		
Maleic anhydride	11	MLA	
Maleic anhydride copolymer	33		
Mesityl oxide	[1]18	MSO	
Methacrylic acid	4	MAD	
Methacrylonitrile	*15	MET	
Methane	31	MTH	
Methoxy triglycol	40	MTG	
Methyl acetate	34	MTT	
Methyl acetoacetate	34		
Methyl acetylene, Propadiene mixture.	30	MAP	
Methyl acrylate	14	MAM	
Methyl alcohol	20	MAL	
Methylamine	7	MTA	
Methylamine solutions	7	MSZ	
Methyl amyl acetate	34	MAC	
Methyl amyl alcohol	20	MAA	
Methyl amyl ketone	*18	MAK	
Methyl bromide	36	MTB	
Methyl tert-butyl ether	[2]41	MBF	
3-Methyl butyraldehyde	19		
Methyl butyrate	*34	MBU	
Methyl chloride	36	MTC	
4,4'-Methylene dianiline (43 pct. or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixtures.	*9	MDB	
2-Methyl-6-ethyl aniline	9	MEN	
Methyl ethyl ketone	18	MEK	
2-Methyl-5-ethyl pyridine	9	MEP	
Methyl formal	41	MTF	
Methyl formate	*34	MFM	
Methyl heptyl ketone	18	MHK	
2-Methyl-1,2-hydroxy-3-butyne.	20	MHB	
Methyl isoamyl ketone	18		
Methyl isobutyl carbinol	20	MIC	
Methyl isobutyl ketone	18	MIK	
Methyl methacrylate	14	MMM	
Methyl naphthalene	32	MNA	
Methylolureas	19	MUS	
Methyl pyridine	9		MPE/ MPF/ MPR
N-Methyl pyrrolidone	9	MPY	
alpha-Methyl styrene	30	MSR	
Mineral spirits	33	MNS	
Molasses	20		
Monochlorodifluoromethane	36	MCF	
Morpholine	7	MPL	
Motor fuel antiknock compounds containing lead alkyls.	[1]0	MFA	
Naphtha:			
Coal tar	33	NCT	
Cracking fraction	[2]33		

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Petroleum	33	PTN	
Solvent	33	NSV	
Stoddard solvent	33	NSS	
Varnish Makers' and Painters'.	33	NVM	
Naphthalene	32	NTM	
Naphthenic acid	4	NTI	
Nitric acid (70 pct. or less)	3	NCD	
Nitric acid (greater than 70 pct.).	*[1]0		NAC
Nitrobenzene	42	NTB	
o-Nitrochlorobenzene	42	CNO	CNP
Nitroethane	*42	NTE	
o-Nitrophenol	*[1]0	NTP	NIP/NPH
Nitropropane	42	NPM	NPN/NPP
Nitropropane, Nitroethane mixture.	*42	NNM	
Nitrotoluene	42	NIT	NIE/NTT/ NTR
Nonane	31	NAN	
Nonene	30	NON	NNE
Nonyl alcohol	20	NNN	
Nonyl phenol	21	NNP	
Nonyl phenol (ethoxylated)	40		
Nonyl phenol sulfide solution	33		NPS
1-Octadecene	30		
Octadecenoamide	10		
Octane	31	OAN	IOO
Octene	30	OTE	
Octyl alcohol	20	OTA	IOA
Octyl aldehyde	19		IOC
Octyl epoxytallate	34	OET	
Octyl nitrate	*[2]34		
Octyl phenol	*21		
Oils:			
Clarified	33	OCF	
Coal	33		
Crude	33	OIL	
Diesel	33	ODS	
Residual	33		
Road	33	ORD	
Transformer	33	OTF	
Edible oils, including:			
Babassu	34		
Castor	34	OCA	
Coconut	34	OCC	
Coconut, methyl ester	34		
Corn	34		
Cotton seed	34	OCS	
Cotton seed, fatty acid	34		
Fish	34	OFS	
Lard	34	OLD	
Olive	34	OOL	
Palm	34	OPM	
Peanut	34	OPN	
Rapeseed	34		
Rice bran	34		
Safflower	34	OSF	
Soya bean	34	OSB	
Soybean (epoxidized)	40		EVO
Sunflower seed	34		
Tucum	34	OTC	
Vegetable	34	OVG	
Fuel oils:			
No. 1	33	OON	
No. 1-D	33	OOD	
No. 2	33	OTW	
No. 2-D	33	OTD	
No. 4	33	OFR	
No. 5	33	OFV	
No. 6	33	OSX	
Miscellaneous oils, including:			
Absorption	33	OAS	
Aliphatic	33		
Aromatic (5 pct. or less Benzene).	33		
Coal tar	33	OCT	
Heartcut distillate	33		
Linseed	33	OLS	
Lubricating	33	OLB	
Mineral	33	OMN	
Mineral seal	33	OMS	
Motor	33	OMT	
Neatsfoot	33	ONF	
Oiticica	34		
Penetrating	33	OPT	
Range	33	ORG	
Resin	33	ORS	
Resinous petroleum	33		

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Rosin	33	ORN	
Seal	34		
Soapstock	34		
Sperm	33	OSP	
Spindle	33	OSD	
Spray	33	OSY	
Tall	34	OTL	
Tall, fatty acid	*34		
Tanner's	33	OTN	
Tung	34		
Turbine	33	OTB	
White (mineral)	33		
Oleic acid	4	OLA	
Oleum	[1] [3] 0	OLM	
Oxyalkylated alkyl phenol formaldehyde	*33		
Pentachloroethane	36	PCE	
Pentadecanol	20	PDC	
1,3-Pentadiene	30	PDI	PDN
Pentaethylenehexamine, Tetraethylenepentamine mixture	*7	PEP	
Pentane	31		IPT/PTA
1-Pentene	30	PTE	
Pentene, Miscellaneous hydrocarbon mixture	* [3] 30		
3-Pentenenitrile	37	PNT	
Pentyl aldehyde	19		
Perchloroethylene	36	PER	
Petrolatum	33	PTL	
Phenol	21	PHN	
Phosphoric acid	1	PAC	
Phosphorus	[1] 0		PPW/PPR/PPB
Phthalic anhydride	11	PAN	
Pinene	30		
Polyalkenyl succinic anhydride amine	*33		
Polybutadiene, hydroxyl terminated	*20		
Polybutene	30	PLB	
Polydimenthylsiloxane	*34		
Polyethylene glycols	40		
Polyethylene polyamines	7	PEB	
Polymethylene polyphenyl isocyanate	12	PPI	
Polymethylsiloxane	*34		
Polypropylene	30	PLP	
Polypropylene glycol	40	PGC	
Polypropylene glycol methyl ether	40	PGM	
Polyvinylbenzyltrimethyl ammonium chloride solution	43	PVB	
Propane	31	PRP	
Propanolamine	8		MPA/PLA/PRM
Propionaldehyde	19	PAD	
Propionic acid	4	PNA	
Propionic anhydride	11	PAH	
Propionitrile	37	PCN	
Propyl acetate	34		IAC/PAT
Propyl alcohol	20		IPA/PAL
Propylamine	7		IPO/IPP/PRA
Propylene	30	PPL	
Propylene butylene polymer	30	PBP	
Propylene glycol	20	PPG	
Propylene oxide	16	POX	
Propylene tetramer	30	PTT	
Propyl ether	41	PMM	IPE
Pseudocumene	32		TME
Pyridine	9	PRD	
Pyridine bases	* 9	PRB	
Rum	*20		
Salicylaldehyde	*19	SAL	
Sewage sludge	43		
Sodium borohydride, Sodium hydroxide solution	5	SBX	SBH/SBI
Sodium carbonate solutions	5		
Sodium chlorate solution	* [3] 0	SDD	SDC
Sodium cyanide solution	5	SCS	SCN
Sodium dichromate solution	* [3] 0	SDL	SCR
Sodium dimethyl naphthalene sulfonate solution	[3] 34		
Sodium hydrosulfide solution	5	SHR	
Sodium hypochlorite solution	5	SHP	SHC
Sodium 2-mercaptobenzothiazol solution	*5	SMB	
Sodium polyacrylate solution	[2] 43		
Sodium salt of Ferric hydroxy-ethylenediamine triacetic acid solution	*43	STA	
Sodium silicate solution	[2] 43	SSC	
Sodium sulfide, hydrosulfide solution	* [1] 0		SSH/SSI/SSJ
Sodium thiocyanate solution	* [2] 0	STS	SCY
Sorbitol solutions	20		SBT
Stearic acid	4	SRA	
Styrene	30	STY	
Sulfolane	39	SFL	
Sulfur	[1] 0	SXX	
Sulfuric acid	[2] 2	SFA	
Sulfuric acid, spent	2	SAC	
Tallow	34	TLO	
Tallow fatty acid	[3] 34		
Tallow fatty alcohol	20	TFA	
Tallow nitrile	37		
1,1,2,2-Tetrachloroethane	36	TEC	
Tetradecanol	20	TTN	
Tetradecene	30	TTD	
Tetradecylbenzene	32	TDB	
Tetraethylene glycol	40	TTG	
Tetraethylenepentamine	7	TTP	
Tetrahydrofuran	41	THF	
Tetrahydronaphthalene	32	THN	
Tetrasodium salt of EDTA solution	43		
Titanium tetrachloride	* 2	TTT	
Toluene	32	TOL	
Toluenediamine	9	TDA	
Toluene diisocyanate	12	TDI	
o-Toluidine	9	TLI	
Triarylphosphate	34		
Tributyl phosphate	34	TBP	
1,2,4-Trichlorobenzene	36	TCB	
1,1,1-Trichloroethane	36	TCE	
1,1,2-Trichloroethane	36	TCM	
Trichloroethylene	[3] 36	TCL	
1,2,3-Trichloropropane	* 36	TCN	
1,1,2-Trichloro-1,2,2-trifluoroethane	36		
Tridecane	34		
Tridecanol	20	TDN	
Tridecene	30	TDC	
Tridecylbenzene	32		
Triethanolamine	8	TEA	
Triethylamine	7	TEN	
Triethyl benzene	32	TEB	
Triethylene glycol	40	TEG	
Triethylene glycol butyl ether mixture	40		
Triethylene glycol ether mixture	40		
*Triethylenetetramine	7	TET	
Triethyl phosphate	34		
Triethyl phosphite	* [3] 34	TPI	
Triisooctyl trimellitate	34		
Triisopropanolamine	* 8	TIP	
Triisopropanolamine salt of 2,4-D acid solution	* 43	TSA	
Trimethyl benzene	32		TMD/TME/TMB
2,2,4-Trimethyl pentanediol-1,3-diisobutyrate	34		
2,2,4-Trimethyl-3-pentanol-1-isobutyrate	34		
Tripropylene	30		
Tripropylene glycol	40	TGC	
Tripropylene glycol monomethyl ether	* 40		
Trisodium nitrilotriacetate	* 34		
Turpentine	30	TPT	
Undecanol	20	UND	
Undecene	30	UDC	
Undecylbenzene	32	UDB	
Urea, Ammonium nitrate solution (containing Ammonia)	6	UAS	
Urea, Ammonium nitrate solution (not containing Ammonia)	43	ANU	
Valeraldehyde	* 19	VAK	IVA/VAL
Vanillin black liquor	* 5	VBL	
Vinyl acetate	13	VAM	
Vinyl acetate, Fumarate copolymer	34		
Vinyl chloride	35	VCM	
Vinyl ethyl ether	* 13	VEE	
Vinylidene chloride	35	VCI	
Vinyl neodecanate	13	VND	
Vinyl toluene	13	VNT	
Waxes:			
Carnauba	* 34	WCA	
Paraffin	* 31	WPF	
Xylene	32	XLX	XLM/XLO/XLP
Zinc bromide, calcium bromide solution	43		

* New addition to 46 CFR Part 150.

[1] Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G-MTH-3), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-1577.

[2] See Appendix I—Exceptions to the Chart.

9. By revising Table II to read as follows:

Table II—Grouping of Cargoes

0. *Unassigned Cargoes*
   - Acetone cyanohydrin *(2)
   - Alkyl benzene sulfonic acid *(1,2)
   - Benzenesulfonyl chloride *(2)
   - gamma-Butyrolactone *(2)
   - Chlorine (1)
   - Chlorosulfonic acid (1)
   - Dimethylamine salt of 2,4-D solution *(2)
   - Ethylene (1)
   - 2-Hydroxyethyl acrylate *(2)
   - Magnesium chloride solution *(2)
   - Motor fuel antiknock compounds containing Lead alkyls (1)
   - Nitric acid (greater than 70 pct.) (1)
   - o-Nitrophenol *(2)
   - Oleum (1,2)
   - Phosphorus (1)
   - Sodium chlorate solution *(2)
   - Sodium dichromate solution *(2)
   - Sodium sulfide, hydrosulfide solution *(1)
   - Sodium thiocyanate solution *(2)
   - Sulfur (1)

1. *Non-Oxidizing Mineral Acids*
   - Hydrochloric acid
   - Hydrochloric acid, spent *
   - Hydrofluoric acid
   - Hydrofluorosilicic acid
   - Phosphoric acid

2. *Sulfuric Acids*
   - Sulfuric acid
   - Sulfuric acid, spent (2)
   - Titanium tetrachloride *

3. *Nitric Acid*
   - Nitric acid (70 pct. or less)

4. *Organic Acids*
   - Acetic acid
   - Acrylic acid (2)
   - Butyric acid
   - Cashew nut shell oil (untreated)
   - Chloroacetic acid solution *
   - Cyclohexane oxidation product acid water*
   - 2,2-Dichloropropionic acid
   - 2,2-Dimethyloctanoic acid
   - 2-Ethylhexanoic acid
   - Formic acid
   - n-Heptanoic acid

Methacrylic acid
Naphthenic acid
Nonanoic acid
Oleic acid
Propionic acid
Stearic acid
5. *Caustics*
Ammonium sulfide solution *
Caustic potash solution (2)
Caustic soda solution (2)
Cresylate spent caustic
Kraft black liquor *
Sodium borohydride, Sodium hydroxide solution
Sodium carbonate solutions
Sodium cyanide solution
Sodium hydrosulfide solution
Sodium hypochlorite solution
Sodium 2-mercaptobenzothiazol solution *
Vanillin black liquor *
6. *Ammonia*
Ammonia, anhydrous
Ammonium hydroxide (28 pct. or less Ammonia)
Ammonium nitrate, Urea solution (containing Ammonia)
Urea, Ammonium nitrate solution (containing Ammonia)
7. *Aliphatic Amines*
N-Aminoethylpiperazine *
Butylamine
Cyclohexylamine
Dibutylamine
Diethylamine
Diethylenetriamine
Diisobutylamine *
Diisopropylamine
Dimethylamine
N,N-Dimethylcyclohexylamine
Di-n-propylamine
Dodecylamine, Tetradecylamine mixture (2)
Ethylamine
Ethylamine solution *
N-Ethyl-n-butylamine
N-Ethyl cyclohexylamine *
Ethylenediamine (2)
2-Ethyl hexylamine
Hexamethylenediamine solution *
Hexamethylenetetramine *
Hexamethylenimine
Methylamine
Methylamine solutions
Morpholine
Pentaethylenehexamine, Tetraethylenepentamine mixture *
Polyethylene polyamines
Propylamine
Tetraethylenepentamine
Triethylamine
Triethylenetetramine
8. *Alkanolamines*
2-(2-Aminoethoxy)ethanol
Aminoethylethanolamine
2-Amino-2-methyl-1-propanol
Diethanolamine
Diethylethanolamine
Diisopropanolamine
Dimethylethanolamine
Ethanolamine
Propanolamine
Triethanolamine
Triisopropanolamine *
9. *Aromatic Amines*
Aniline
2-Ethyl-6-methyl-N-(1-methyl-2-methoxyethyl)aniline
4,4'-Methylene dianiline (43 pct. or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixtures
2-Methyl-6-ethyl aniline
2-Methyl-5-ethyl pyridine
Methyl pyridine
N-Methyl pyrrolidone
Pyridine
Pyridine bases *
Toluenediamine
p-Toluidine
10. *Amides*
Acrylamide solution
Dimethyl acetamide
Dimethylformamide
Formamide *
Octadecenoamide
11. *Organic Anhydrides*
Acetic anhydride
Maleic anhydride
Phthalic anhydride
Propionic anhydride
12. *Isocyanates*
Diphenylmethane diisocyanate
Polymethylene polyphenyl isocyanate
Toluene diisocyanate
13. *Vinyl Acetate*
Vinyl acetate
Vinyl ethyl ether *
Vinyl neodecanate
Vinyl toluene
14. *Acrylates*
Butyl acrylate
Butyl methacrylate
Butyl methacrylate, Decyl methacrylate, Cetyl eicosyl methacrylate mixture
Cetyl eicosyl methacrylate *
Decyl acrylate
Dodecyl methacrylate*
Dodecyl, Pentadecyl methacrylate
Ethyl acrylate
2-Ethylhexyl acrylate
Ethyl methacrylate
Methyl acrylate
Methyl methacrylate
15. *Substituted Allyls*
Acrylonitrile (2)
Allyl alcohol (2)
Allyl chloride
1,3-Dichloropropene
Dichloropropene, Dichloropropane mixtures
Methacrylonitrile*
16. *Alkylene Oxides*
Butylene oxide
Ethylene oxide, Propylene oxide mixtures
Propylene oxide
17. *Epichlorohydrin*
Epichlorohydrin
18. *Ketones*
Acetone
Acetophenone
Amyl methyl ketone*
Butyl heptyl ketone
Camphor oil
Cyclohexanone
Cyclohexanone, Cyclohexanol mixtures* (2)
Diisobutyl ketone
Epoxy resin
Ketone residue*
Isophorone (2)
Mesityl oxide (2)
Methyl amyl ketone*
Methyl ethyl ketone
Methyl heptyl ketone
Methyl isoamyl ketone
Methyl isobutyl ketone
19. *Aldehydes*
Acetaldehyde
Acrolein (2)
Butyraldehyde
Crotonaldehyde (2)
Decaldehyde
Ethylhexaldehyde
2-Ethyl-3-propylacrolein (2)
Formaldehyde, Methanol mixtures (2)
Formaldehyde solution
Furfural
Glutaraldehyde solution
Glyoxal solutions
3-Methyl butyraldehyde
Methylolureas
Octyl aldehyde
Pentyl aldehyde
Propionaldehyde
Salicylaldehyde *
Valeraldehyde *
20. *Alcohols, Glycols*
Alcohols (mixed)
Amly alcohol
Behenyl alcohol
Butyl alcohol
Butylene glycol (2)
Choline chloride solutions
Cyclohexanol
Decyl alcohol
Diacetone alcohol
Diisobutyl carbinol
2,2-Dimethylpropane-1,3-diol
Dodecanol
Ethoxylated alcohols, C11–C15
Ethyl alcohol
Ethyl butanol
Ethylene chlorohydrin
Ethylene cyanohydrin
Ethylene glycol
2-Ethylhexanol
Furfuryl alcohol
Glycerine
Heptanol
Hexanol
Hexylene glycol
Methyl alcohol
Methyl amyl alcohol
2-Methyl-2-hydroxy-3-butyne
Methyl isobutyl carbinol
Molasses
Nonyl alcohol
Octyl alcohol
Pentadecanol
Polybutadiene, hydroxyl terminated
Propyl alcohol
Propylene glycol
Rum
Sorbitol solutions
Tallow fatty alcohol
Tetradecanol
Tridecanol
Undecanol
21. *Phenols, Cresols*
Benzyl alcohol *
Carbolic oil
Creosote
Cresols
Cresylic acid
2,4-Dichlorophenol
Nonyl phenol
Octyl phenol *
Phenol
22. *Caprolactam Solutions*

Caprolactam solution
23–29. *Unassigned*
30. *Olefins*
Amylene *
Butadiene
Butadiene, Butene mixtures (cont. Acetylenes) *
Butene
Butylene
Cyclopentadiene polymers
Cyclopentadiene, Styrene, Benzene mixture
Decene
Dicyclopentadiene
Diisobutylene
Dipentene
Dodecene
Ethylene
Ethylidene norbornene (2)
1-Heptene
Hexene
Isoprene
Methyl acetylene, Propadiene mixture
alpha-Methyl styrene
Nonene
1-Octadecene
Octene
1.3-Pentadiene
1-Pentene
Pentene, Miscellaneous hydrocarbon mixture * (2)
Pinene
Polybutene
Polypropylene
Propylene
Propylene butylene polymer
Propylene tetramer
Styrene
Tetradecene
Tridecene
Tripropylene
Turpentine
Undecene
31. *Paraffins*
Butane
Cycloaliphatic resins
Cyclohexane
Decane
Dodecane
Ethane
Heptane
Hexane
Methane
Nonane
Octane
Pentane
Propane
Waxes:
Paraffin*
32. *Aromatic Hydrocarbons*
Benzene
Benzene, Hydrocarbon mixtures (10 pct. Benzene or more)*
Benzene, Toluene, Xylene mixtures
Cumene
Cymene
Decyl benzene
Diethylbenzene
Diisopropyl benzene
Diisopropyl naphthalene
Dodecylbenzene
Ethyl benzene
Industrial waste (containing Dimethyldisulfide, Methyl mercaptan, and Methomyl)*
Methyl naphthalene
Naphthalene
Pseudocumene
Tetradecylbenzene
Tetrahydronaphthalene
Toluene
Tridecylbenzene
Triethyl benzene
Trimethyl benzene
Undecylbenzene
Xylene
33. *Miscellaneous Hydrocarbon Mixtures*
Asphalt
Asphalt blending stocks, roofers flux
Asphalt blending stocks, straight run residue
Calcuim sulfonate, Calcium carbonate, Hydrocarbon solvent mixture*
Carbon black base
Diphenyl, Diphenyl oxide
Distillates, flashed feed stocks
Distillates, straight run
Fatty acid amides
Fuel oils:
No. 1
No. 1–D
No. 2
No. 2–D
No. 4
No. 5
No. 6
Gas oil, cracked
Gasoline blending stock, alkylates
Gasoline blending stock, reformates
Gasolines:
Automotive (not over 4.23 grams lead per gal.)
Aviation (not over 4.86 grams lead per gal.)
Casinghead (natural)
Polymer
Straight run
Glycols, Resins, and Solvents mixture
Herbicide (C15–H22–NO2–Cl)
Jet Fuels:
JP–1
JP–3
JP–4
JP–5
Kerosene
Magnesium nonyl phenol sulfide
Maleic anhydride copolymer
Mineral spirits
Miscellaneous oils, including:
Absorption
Aliphatic
Aromatic (5 pct. or less Benzene)
Coal Tar
Heartcut distillate
Linseed
Lubricating
Mineral
Mineral seal
Motor
Neatsfoot
Penetrating
Range
Resin
Resinous petroleum
Rosin
Sperm
Spindle
Spray
Tanner's
Turbine
White (mineral)
Naphtha:
Coal tar
Cracking fraction (2)
Petroleum
Solvent
Stoddard solvent
Varnish Makers' and Painters'
Nonyl phenol sulfide solution
Oxyalkylated alkyl phenol formaldehyde*
Oils:
Clarified
Coal
Crude
Diesel
Residual
Road
Transformer
Petrolatum
Polyalkenyl succinic anhydride amine*
34. *Esters*
Acetyl tributyl citrate
Alkyl phthalates
Amyl acetate
Amyl tallate
Butyl acetate
Butyl benzyl phthalate *
Butyl formate
Dibutyl phthalate
Diethylene glycol monobutyl ether acetate
Di-(ethylhexyl)phthalate*
Diethyl sulfate
Diheptyl phthalate
Di-n-hexyl adipate*
Diisodecyl phthalate
Diisononyl adipate*
Diisononyl phthalate
Diisooctyl phthalate
Dimethyl adipate*
Dimethylcyclicsiloxane hydrolyzate*
Dimethyl glutarate*
Dimethyl hydrogen phosphite
Dimethyl phthalate
Dimethyl polysiloxane*
Dimethyl succinate*
Dinonyl phthalate
Dioctyl phthalate
Dipropylene glycol dibenzoate
Diundecyl phthalate
Edible oils, including:
Babassu
Castor
Coconut
Coconut, methyl ester
Corn
Cotton seed
Cotton seed, fatty acid
Fish
Lard
Olive
Palm
Peanut
Rapeseed
Rice bran
Safflower
Soya bean
Sunflower seed
Tucum
Vegetable
Ethyl acetate
Ethyl acetoacetate*
Ethyl butyrate*
Ethylene glycol monobutyl ether acetate
Ethylene glycol monoethyl ether acetate
Ethyl hexyl tallate
Ethyl propionate*
Glyceryl triacetate
Glycidyl ester of Versatic acid

Glycol diacetate
Methyl acetate
Methyl acetoacetate
Methyl amyl acetate
Methyl butyrate*
Methyl formate*
Miscellaneous oils, including:
Oiticica
Seal
Soapstock
Tall
Tall, fatty acid*
Tung
Octyl epoxytallate
Octyl nitrate* (2)
Polydimethylsiloxane*
Polymethylsiloxane*
Propyl acetate
Sodium dimethyl naphthalene sulfonate solution (2)
Tallow
Tallow fatty acid (2)
Triarylphosphate
Tributyl phosphate
Tridecane
Triethyl phosphate
Triethyl phosphite * (2)
Triisooctyl trimellitate (2)
2,2,4-Trimethyl pentanediol-1,3-diisobutyrate
2,2,4-Trimethyl-3-pentanol-1-isobutyrate
Trisodium nitrilotriacetate *
Vinyl acetate, Fumarate copolymer
Waxes:
Carnauba

35. *Vinyl Halides*
Vinyl chloride
Vinylidene chloride

36. *Halogenated Hydrocarbons*
Benzyl chloride *
Carbon tetrachloride
Chlorobenzene
Chlorodifluoromethane
Chloroform
Chlorotoluene *
Dichlorobenzene
Dichlorodifluoromethane
1,1-Dichloroethane
2,2'-Dichloroisopropyl ether
Dichloromethane
Dichloropropane
Ethyl chloride
Ethylene dibromide
Ethylene dichloride
Methyl bromide
Methly chloride
Monochlorodifluoromethane
Pentachloroethane
Perchloroethylene
1,1,2,2-Tetrachloroethane
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene (2)
1,2,3-Trichloropropane *
1,1,2-Trichloro-1,2,2-trifluoroethane

37. *Nitriles*
Acetonitrile
Adiponitrile
3-Pentenenitrile
Propionitrile
Tallow nitrile

38. *Carbon Disulfide*
Carbon disulfide

39. *Sulfolane*
Sulfolane

40. *Glycol Ethers*
Diethylene glycol
Diethylene glycol monobutly ether
Diethylene glycol monoethyl ether
Diethylene glycol monomethly ether
Diethylene glycol monophenyl ether
Dipropylene glycol

Edible oils Soybean (epoxidized)
Ethoxy triglycol
Ethylene glycol monobutyl ether
Ethylene glycol monoethyl ether
Ethylene glycol monoisopropyl ether
Ethylene glycol monomethly ether
Ethylene glycol phenyl ether
Methoxy triglycol
Nonyl phenol (ethoxylated)
Polyethylene glycols
Polypropylene glycol methyl ether
Polypropylene glycols
Tetraethylene glycol
Triethylene glycol
Triethylene glycol butyl ether mixture
Triethylene glycol ether mixture
Tripropylene glycol

41. *Ethers*
Butyl ether
2,2'-Dichloroethyl ether
Digylcidyl ether of Bisphenol A
Dimethyl furan *
1,4-Dioxane
Diphenyl oxide, Diphenyl phenyl ether mixture *
Ethyl ether
Methyl-tert-butyl ether (2)
Methyl formal
Propyl ether
Tetrahydrofuran

42. *Nitrocompounds*
Chloronitrobenzene, see o-Nitrochlorobenzene
Nitrobenzene
o-Nitrochlorobenzene
Nitroethane
Nitropropane
Nitropropane, Nitroethane mixture *
Nitrotoluene

43. *Miscellanous Water Solutions*
Ammonium bisulfite solution *(2)
Ammonium nitrate, Urea solution (not containing Ammonia)
Ammonium polyphosphate solution
Ammonium sulfate solution
Calcium bromide solution
Calcium chloride solution
Corn syrup
Dextrose solution
Diammonium salt of Zinc EDTA solution
Diethanolamine salt of 2,4-D acid solution *
Dodecyl diphenyl oxide disulfonate solution
Ethylene, Vinyl acetate copolymer emulsion *
Kaolin clay slurry
Latex, liquid synthetic
Lignin liquor
Polyvinylbenzyltrimethyl ammonium chloride solution
Sewage sludge
Sodium polyacrylate solution (2)
Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution *
Sodium silicate solution (2)
Tetrasodium salt of EDTA solution
Triisopropanolamine salt of 2,4-D acid solution *
Urea, Ammonium nitrate solution (not containing Ammonia)
Zinc bromide, Calcium bromide solution

(*) New addition to 46 CFR Part 150.

(1) Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G-MTH-3), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-1577.

(2) See Appendix I—Exceptions to the Chart.

10. By revising Appendix I, to read as follows:

Appendix I—Exceptions to the Chart

a. The binary combinations listed below have been tested as prescribed in Appendix III and found not to be dangerously reactive. These combinations are exceptions to the Compatibility Chart (Figure 1) and may be stowed in adjacent tanks.

Member of reactive group	Compatible with
Acetone cyanohydrin (0)	Acetic acid (4).
Acrylonitrile (15)	Triethanolamine (8).
1,3-Butylene glycol (20)	Morpholine (7).
Caustic potash, 50 pct. or less (5).	Ethyl alcohol (20).
	Methyl alcohol (20).
	iso-Octyl alcohol (20).
Caustic soda, 50 pct. or less (5).	Butyl alcohol (20).
	tert-Butyl alcohol, Methanol mixtures.
	Decyl alcohol (20).
	Diacetone alcohol (20).
	Diethylene glycol (40).
	Ethyl alcohol (20).
	Ethylene glycol (20).
	Ethylene glycol, Diethylene glycol mixture (20).
	Ethyl hexanol (Octyl alcohol) (20).
	Methyl alcohol (20).
	Nonyl alcohol (20).
	Propyl alcohol (20).
	Propylene glycol (20).
	Sodium chlorate (0).
Dodecyl and Tetradecylamine mixture (7).	Tall oil, fatty acid (34)
Ethylenediamine (7)	Butyl alcohol (20).
	Butylene glycol (20).
	Creosote (21).
	Diethylene glycol (40).
	Ethyl alcohol (20).
	Ethylene glycol (20).
	Ethyl hexanol (20).
	Glycerine (20).
	Isononyl alcohol (20).
	Isophorone (18).
	Methyl butyl ketone (18).
	Methyl iso-butyl ketone (18).
	Methyl ethyl ketone (18).
	Propyl alcohol (20).
	Propylene glycol (20).
Oleum (0)	Hexane (31).
	Methylene chloride (36).
Sulfuric acid (2)	Coconut oil (34).
	Coconut oil acid (34).
	Palm oil (34).
	Tallow (34).
Sulfuric acid, 98 pct. or less (2).	Choice white grease tallow (34).

b. The binary combinations listed below have been determined to be dangerously reactive, based on either data obtained in the literature or on laboratory testing which has been carried out in accordance with procedures prescribed in Appendix III. These

combinations are exceptions to the Compatibility Chart (Figure 1) and may not be stowed in adjacent tanks.

Acetone cyanohydrin (0) is not compatible with Groups 1–12, 16, 17 and 22.

Acrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Acrylic acid (4) is not compatible with Group 9, Aromatic Amines.

Alkyl benzene sulfonic acid (0) is not compatible with Group 1–3, 5–9, 15, 16, 18, 19, 30, 34, 37, and strong oxidizers.

Allyl alcohol (15) is not compatible with Group 12, Isocyanates.

Benzenesulfonyl chloride (0) is not compatible with Group 5–7, and 43.

gamma-Butyrolactone (0) is not compatible with Group 1–9.

Crotonaldehyde (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Cyclohexanone, Cyclohexanol mixture (18) is not compatible with Group 12, Isocyanates.

Dimethylene salt of 2,4-D solution (0) is not compatible with Groups 1–5, 11, 12, and 16.

Dimethyl hydrogen phosphite (34) is not compatible with Groups 1 and 4.

Ethylenediamine (7) is not compatible with Ethylene dichloride (36).

Ethylene dichloride (36) is not compatible with Ethylenediamine (7).

Ethylidene norbornene (30) is not compatible with Groups 1–3 and 5–8.

2-Ethyl-3-propylacrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Fish oil (34) is not compatible with Sulfuric acid (2).

Formaldehyde (over 50%) in Methyl alcohol (over 30%) (19) is not compatible with Group 12, Isocyanates.

Formic acid (4) is not compatible with Furfural alcohol (20).

Furfuryl alcohol (20) is not compatible with Group 1, Non-Oxidizing Mineral Acids and Formic acid (4).

2-Hydroxyethyl acrylate is not compatible with Groups 2, 3, 5–8 and 12.

Isophorone (18) is not compatible with Group 8, Alkanolamines.

Magnesium chloride solution (0) is not compatible with Groups 2, 3, 5, 6 and 12.

Mesityl oxide (18) is not compatible with Group 8, Alkanolamines.

Methyl tert-butyl ether (41) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Naphtha, cracking fraction (33) is not compatible with strong acids, caustics or oxidizing agents.

o-Nitrophenol (0) is not compatible with Groups 2, 3, and 5–10.

Octyl nitrates (all isomers) (34) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Oleum (0) is not compatible with Sulfuric acid (2).

Pentene, Miscellaneous hydrocarbon mixtures (30) are not compatible with strong acids or oxidizing agents.

Sodium chlorate solution (50% or less) (0) is not compatible with Groups 1–3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dichromate solution (70% or less) (0) is not compatible with Groups 1–3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dimethyl naphthalene sulfonate solution (34), is not compatible with Group 12, Formaldehyde and strong oxidizing agents.

Sodium polyacrylate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium silicate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium thiocyanate (56% or less) (0) is not compatible with Groups 1–4.

Sulfuric acid (2) is not compatible with Fish oil (34), or Oleum (0).

Tallow fatty acid (34) is not compatible with Group 5, Caustics.

Trichloroethylene (36) is not compatible with Group 5, Caustics.

Triethyl phosphite (34) is not compatible with Groups 1, and 4.

11. By revising paragraph (3) of Appendix II to read as follows:

Appendix II—Explanation of Figure 1

* * * * *

(3) If both group numbers do not fall between 30 and 43 inclusive, locate one of the numbers on the left of the chart (Cargo Groups) and the other across the top (Reactive Groups). (Note that if a group number is between 30 and 43, it can only be found on the left side of the chart.) The box formed by the intersection of the column and row containing the two numbers will contain one of the following:

(a) Blank—The two cargoes are compatible.

(b) "X"—The two cargoes are not compatible.

(Note that reactivity may vary among the group members. Refer to Table I or Table II to find whether the products in question are referenced by a footnote which indicates that exceptions exist and are listed in Appendix I. Unless the combination is specifically mentioned in Appendix I, it is compatible.)

* * * * *

12. By revising the first paragraph of the Procedure in Step 2 of Appendix III to read as follows:

Appendix III—Testing Procedures for Determining Exceptions to the Chart

* * * * *

Procedure—These separate mixes of the proposed binary combination will be tested. These are 2 ml : 18 ml, 10 ml : 10 ml, and 18 ml : 2 ml, respectively, to result in a final mixture of about 20 ml in each case.

* * * * *

Dated: August 2, 1985.

B. G. Burns,

Captain, U.S. Coast Guard, Acting Chief Officer of Merchant Marine Safety

[FR Doc. 85-19441 Filed 8-15-85; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

46 CFR Part 298

Obligation Guarantees

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department of Transportation published a final rule on obligation guarantees on March 8, 1985 (50 FR 9437). The final rule prescribes conditions, terms and procedures for applying for and administering Federal ship financing assistance in the form of obligation guarantees. (An "obligation guarantee" is a pledge of the full faith and credit of the United States to the payment of the unpaid principal and interest on the guarantee of a note, bond, debenture, or other evidence of indebtedness as defined in the Merchant Marine Act, 1936.) A notice of proposed rulemaking (NPRM) was published on that same date (50 FR 9456), asking for comments on the following issues: procedures for the calculation of the internal rate of return, used to assist in determining the economic soundness of a project proposed for an obligation guarantee; and the anticipated economic impact of the proposed requirement. It also requested comment on proposed changes to confidential information disclosure and insurance reporting requirements pertaining to obligation guarantee applications. Since no comments were received on the NPRM, this final rule adopts calculation procedures based on the total project cost, as set out in the NPRM.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: James L. Westcott, Director, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW., Washington, D.C. 20590, Telephone (202) 382-0389.

SUPPLEMENTARY INFORMATION:

Comments

MARAD received no comments on the NPRM. Therefore, MARAD is publishing this final rule which adopts the proposals in the NPRM with no changes.

Background

Section 298.14 of the existing rule on obligation guarantees provides that no letter of commitment for an obligation guarantee will be issued by MARAD without finding that the proposed project will be economically sound. It also provides that economic soundness be determined by considering factors including, among other things: the vessel's potential for employment in the

market over the life of the guarantee, projected revenues and expenses of operation, the length of the guarantee period and any charters or transportation agreements. A final rule was issued on obligation guarantees on March 8, 1985 (50 FR 9451). Section 298.14 of that final rule, required that certain "objective criteria" be added to the existing rule for the determination of economic soundness by MARAD.

To demonstrate economic soundness, MARAD required in the final rule that the applicant submit a cash flow analysis statement including, among other things, an internal rate of return (IRR) analysis. Each project would have to meet certain objective criteria to be considered economically sound: the projected long-term demand for the vessels to be financed must exceed the supply of vessels with similar capacity in applicable markets; the project's projected cash flow must be sufficient to meet the projected Title XI debt service requirements; and the IRR analysis must provide a minimum real rate of return of ten percent.

MARAD included the requirement that applicants provide an IRR of at least ten percent to aid it in evaluating the relative merits of competing applications, and promote uniformity in the procedures followed and the format used by applicants seeking financial assistance under the Title XI program. An IRR analysis shows the relative projected profitability of a proposed project, and whether the facilities or equipment to be acquired, rehabilitated, improved, constructed, developed, or established with the proceeds of the obligation will be economically and efficiently used.

Calculation of the IRR

Although comments were specifically invited in the NPRM, accompanying the final rule discussed above, on the merits of using an IRR analysis in evaluating Title XI applications, no specific comments were requested on procedures for calculation of the IRR. Moreover, the final rule did not clearly indicate what procedures for IRR calculation were being proposed by MARAD nor the relative merits of any particular procedures.

MARAD believes applicants should have clear and precise procedures for complying with an IRR analysis requirement. It is convinced that specific, clear procedures would produce more accurate and complete information that will assist its selection of successful applicants.

In this final rule, MARAD sets out procedures for calculation that would be based on the total project cost. These procedures, involving calculation of the ten percent IRR based on the total project cost, follow procedures and application formats similar to those used by applicants for loan guarantees issued by the Federal Railroad Administration under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (49 U.S.C. 1651 *et seq.*) (Pub. L. 94–210).

Amendments to Confidential Information Disclosure Provision

MARAD is revising paragraph (d)(2) and deleting paragraph (d)(3) of § 298.3 which concern applicant claims of exemption from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. § 552). The revision of paragraph (d)(2) changes the requirement that MARAD make a determination on an applicant's claim of exemption at the time the application is filed. MARAD has found this requirement to be administratively burdensome and to impede expeditious processing of applications. Claims for exemption instead will be reviewed and a determination made at the time a specific request for information is made pursuant to the FOIA by a third party. The present requirement that the applicant assert a claim of exemption from the disclosure provisions of FOIA at the time of filing will not be affected by the revision.

The deletion of paragraph (d)(3) will eliminate the requirement that this information be returned if the applicant receives an unfavorable exemption determination and desires to have it returned. MARAD has found it to be administratively burdensome to collect and return voluminous materials by mail to applicants. It assumes that applicants will have retained copies of such important material.

Insurance Reporting Requirements

This provision (§ 298.42) requires a Title XI obligor to furnish statements from its insurance underwriter(s) or broker(s) confirming that the company is current on its payment of premiums and indicating the effective term of the insurance. Under current practice, MARAD may never be notified that a Title XI obligor has allowed an insurance policy to lapse. This means that the collateral securing the loan guarantee could be accidentally destroyed and the Secretary could not recover on the loss.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administration has determined that this final rule is not a major rule as defined in E.O. 12291, but it is a significant rule under DOT regulatory policies and procedures (49 FR 11034; Feb. 26, 1979). The rule is considered to be significant under DOT Order 2100.5 because it concerns a matter on which there is substantial public interest. Since the great majority of applicants for Title XI obligation guarantees have revenues far in excess of the exisitng Small Business Administration criteria for a small business under the classification of "transportation and warehousing" (13 CFR 121.3–3.10(f)), the Maritime Administrator certifies that this rulemaking will not, under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), exert a significant economic impact on a substantial number of small entities. MARAD believes that since many applicants presently perform IRR analyses of prospective projects in order to make their investment decisions, they will incur only minor administrative cost in complying with any final regulation. Thus, MARAD believes a full regulatory evaluation is unnecessary. MARAD estimates the total annual administrative cost of compliance with these computation requirements to be $1,491 per application, per project. MARAD estimates the total annual administrative cost of preparing and submitting the semiannual insurance confirmation to be $1,500 per applicant per project.

This final rulemaking contains information collection requirements in the following sections: § 298.14 and § 298.42. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), and have been approved for six months by the OMB under control number 2133–0018. The OMB granted the six month approval pending possible program change increases resulting from comments to the NPRM. Since there were no comments regarding the information collection requirements, MARAD is requesting OMB approval of the information collection requirements for the full three year period.

List of Subjects in 46 CFR Part 298

Banks, Banking, Loan programs, Transportation, Maritime Administration, Maritime carriers, Mortgages, Mortgage insurance, Uniform system of account, Vessels.

PART 298—[AMENDED]

For the reasons set out in the preamble, Part 298, Subparts A, B, and

E, Chapter 11 of Title 46, Code of Federal Regulations are amended as follows:

1. The authority citation for Part 298 is revised to read as follows:

Authority: Secs. 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b)) Pub. L. 97-31, August 6, 1981, 49 CFR § 1.66.

2. Section 298.14 is amended by adding a paragraph (b)(4) to read as follows:

§ 298.14 Economic Soundness.

* * * * *

(b) * * *

(4) The project shall have at least a ten percent (in real terms) internal rate of return using the following computation procedures:

(i) A detailed narrative description of the project. This description must present the following: The objectives of the project, e.g., what vessels will be constructed, reconstructed, or reconditioned, and how they will be used. It must also describe any other work to be done as part of the project, and any operating changes, including retirement of assets, which will accompany the investment. For these purposes, the project shall be deemed to include all expenditures (including those for which no Federal assistance is requested) necessary to carry out its objectives.

(ii) A detailed narrative description of the base case. The base case is the most favorable alternative action the applicant could take with little or no investment. The description must be comparable in scope to the description of the project. In some cases, the most favorable alternative action may be to do nothing, i.e., make no change in the current situation. In other cases, the applicant may take other alternative actions such as rerouting traffic, changing operating practices (perhaps with an increase in operating costs), or relying more heavily on vessels or equipment belonging to others. The applicant shall consider such alternative proposals as different ship designs, modification of existing vessels versus new equipment, and analysis of leasing versus direct ownership. If the applicant has considered more than one alternative action (requiring little or no investment) to the project, the applicant must describe each of the actions considered and give the rationale for the selection of the base case from among those other actions.

(iii) A narrative discussion of key assumptions. All general assumptions and those relating only to a particular cash flow impact which substantially affect the IRR should be explained. Assumptions regarding traffic volumes deserve particular attention. The applicant must specify how much revenue is expected if the project or base case are undertaken, and where the difference, if any, between the project and base case is expected to come from. Other key assumptions may relate to actions by third parties, such as regulatory agencies. The applicant shall conduct a sensitivity analysis that takes into account the applicant's historical market share, past market fluctuations, availability of long-term charters, potential government actions, especially in areas of intended foreign operations.

(iv) A narrative discussion of each cash flow impact resulting from the project or base case. The applicant must identify all the cash receipts and disbursements resulting from the project but not the base case, and vice-versa. Cash flows which would be the same in either event should not be considered. For each cost and benefit used in the IRR computations, the applicant must explain why the particular cash flow will result from the project or base case, and how the size of the cash flow and the corresponding measure in physical units were estimated. In addition, the applicant must identify and discuss important costs and benefits which it has not been able to quantify. The applicant must note which of the benefit and cost items could be measured to confirm the predictions in the IRR computation, and must suggest how such measurements could be made. [Appendix A of this subpart lists the most common cash flow impacts of investment projects and base case alternatives, indicates the kinds of actions likely to involve a type of cash flow, suggests how each might be measured (both in physical and monetary units), and discusses special problems associated with each. Appendix A is not exhaustive; other cash flow items should be included in the analysis as appropriate.]

(v) A discussion of the principal areas of uncertainty. This discussion must indicate why particular values might be different from those used in the computation, and the range into which each uncertain value could be expected to fall. It must also indicate the applicant's subjective level of confidence that the computed IRR is a reasonably close prediction of the project's and base case's financial performance. In some circumstances, the applicant must point out where the IRR fails to incorporate certain important features of the project or the base case, or both. The applicant may enhance its discussion by presenting examples of its own prior experiences with IRR, stating, perhaps, that an audit of past computations has shown marked deviations from actual results regardless of the detail of those computations.

(vi) For the project, (as it relates to its base case alternative), a thorough presentation of all the computations underlying the IRR using the Forms I-V of Appendix B to this subpart shall be prepared and provided. State and local tax impacts need not be included in the computations, unless the applicant has determined that their inclusion substantially affects the IRR. The computation of the IRR must follow the four steps described below. (This procedure cannot be used if the project consists of replacing an asset, usually equipment, which would otherwise remain in service (at high cost) for only a few more years. In that situation, the lifetime of the project (the new asset) is substantially longer than the lifetime of the base case (the old asset), so that it is not possible to get a differential cash flow in every year of the project's life. A possible approach for handling such case is to determine the discount rate which gives the same average annual cost per unit of output for both the project and the base case.)

(A) Step 1: the applicant must determine, for each year of the project's expected useful life, up to a maximum of 25 years (unless the cash flow impacts of later years would substantially affect the IRR), both the project's and base case's before-tax cash flow impacts (receipts and disbursements). The cash flow estimates must be done in constant dollars. The effects of financing must also be excluded; that is the cash flows must be estimated as if the required cash were immediately available at no cost.

(*1*) The various cash flow impacts for this step 1 must be shown on Forms I through V of Appendix B as explained below. On Forms I through V, cash flow impacts occurring in the first year of the project and base case are assigned to and recorded in the time period year 1. Cash flows in subsequent years are all assigned to and recorded in the year in which they occur regardless of whether they occur at the beginning or end of the year. For purposes of assigning and recording cash flow impacts of the project and base case, it will be assumed that the project's starting date and, thus, the commencement of year 1 begins as of the first of the January following the year in which an application for financial assistance is filed.

(*2*) Capitalized investments which would occur as a part of the project but

bot in the base case must be entered in Column 1 of Form I. The capitalized investment includes capitalized engineering work, installation expenditures and other startup costs allowable in reporting to the IRS. The total investment for the project must be divided into portions which are homogeneous with respect to depreciation method (if depreciable), depreciation period (if depreciable), year in which the assets enter service, and whether the assets qualify for investment tax credit. (If applicant has a considerable tax credit carry forward, the tax credit must be shown only in the year or years it will result in a reduction of tax payments). A separate form should be completed for each such portion. Similarly, a set of Forms I must be completed for a capitalized investment which would be made as part of the base case but not the project.

(3) Sales of released assets (as useful assets or as scrap), which would occur as a part of the project or the base case, must be entered in Column I of Form II. As was the case for the capitalized investments there must be a separate Form II for each portion of the assets sold, such that each portion is homogeneous with respect to tax treatment and year of sale. Form II must also be completed for retirements of assets, even though the sale price is zero, if the retirement will affect the applicant's income taxes and thereby the applicant's cash flow. The sale or retirement of an asset at the end of the project's life, if the cash flow impact is substantial enough to merit inclusion in the computation, must also appear on one or more Forms II. (If a project would continue as asset already owned in its prior use but the base case would put the asset to an alternative use, and if the cash flow from that alternative use is difficult to determine, the applicant may do the analysis as if the asset were to be sold in the base case at its fair market value when put to the alternative use. Similarly, if the base case would continue the asset in its present use but the project would result in the asset being employed in an alternative use, the anticipated cash flow of which would be difficult to determine, the asset in the project may be treated as a sale at fair market value in the IRR computations. In either event, the market value of the asset otherwise put to an alternative use would be entered in Column 1 of Form II and the asset in its current use (in either the project or base case, as the case may be) would be recorded, as to continuing depreciation and income tax credit, if any, on Form I and, as to expenses and contribution to profit, on Form III. However, whenever possible, the anticipated cash flow of the alternatives use, whether in the project or base case, should be entered of Form III rather than treated as a theoretical sale at a fair market value).

(B) Step 2: The applicant must compute the annual cash flows after Federal income tax corresponding to each of the before-tax flows recorded on each Form I and Form II in the previous step. If the applicant expects to pay taxes in some years but not others, the applicant will undoubtedly carry forward (or back) the tax losses and credit from years in which no tax was paid, so as to take full advantage of them. In that case, the applicant must estimate when such tax benefits will actually be received, and include them in the cash flow stream at the appropriate time. The appropriate tax rate for such computations is the applicant's marginal tax rate. This is the rate which would apply to one additional dollar of income earned by the applicant. The average or effective tax rate (found by dividing firm's actual tax payments by its net income before taxes) is not appropriate for this purpose. If the computations assume the applicant will not pay taxes in certain years, then those assumptions must be explained in the discussion of key assumptions. The tax-related computations must be shown on the same forms as were used to record the pretax cash flows. Additional working papers should be submitted as necessary to clarify the computations. The computations to be done on the two forms are as follows:

(1) On each Form I, the applicant must indicate in Column 2 the depreciation schedule which it expects to use in reporting to the IRS. In Column 3, the applicant must indicate how much its tax bill will be reduced as a result of the depreciation shown in Column 2. In Column 4, the applicant must indicate the tax reduction, if any, it expects from investment tax credit. (The effect of the tax credit must be computed using the flow-through method, in which investment credits are generally treated as reductions in income tax expense of the year in which the credits are actually realized, rather than being deferred and amortized over the productive life of the acquired property.) Column 5 is the net after-tax cash flow associated with the investment.

(2) On each Form II, the applicant must indicate in Column 2 the increase (or decrease) in its Federal income tax payments resulting from the difference between the sale price and the book value of assets to be sold by reason of the project or base case. If an asset is released without a sale or a corresponding writdown of book value, Form II is not used, but For I is used to reflect continuing depreciation as before the release. In Column 3, the applicant must record any recapture of investment tax credit by the IRS. Finally, Column 4 records the net cash flow in or out.

(C) Step 3: The applicant must determine the project's aggregate after-tax cash flow using Form IV. This shall be done as follows:

(1) For each year, the corresponding after-tax cash flow (Column 5 on the various Forms I on which the "project" box was checked are summed, and the total entered into Column 1 of Form IV. Then the net after-tax cash flows on the base case Forms I as summed and entered into Column 2 of Form IV.

(2) Similarly, the project and base case Forms II (Column 4) are consolidated and entered into Columns 3 and 4, respectively, of Form IV.

(D) Step 4: The applicant shall enter the operating income for the project and the base in Form III for each year of the project's life and shall determine and enter the after-tax cash flow. If the applicant excpects to pay no Federal income tax, columns three and four will be identical. If the applicant expects to pay taxes in some years but not others, the applicant must incorporate the effects of carrying losses forward (or back) into the estimated after-tax cash flow. The aggregate net cash flow for the project relative to the base case is then found and entered on Form IV.

(E) Step 5: The aggregate net cash flow for the project relative to the base case is then found and entered in Column 7 of Form IV. All estimates shall be in constant dollars.

(F) Step 6: The applicant must determine the discount rate for which the present value of the differential cash flow stream is zero. Computer programs for calculating the rate of return are widely available. If a program is utilized, copies of the printout showing input and output data, and a brief explanation of the program function must be included in the application. The applicant should furnish:

(1) Copies of all financial analyses which the applicant did on rejected alternatives to the project, including changes in scale or scope. The applicant need not do any such analyses beyond those already done, nor need the format, assumptions, or procedures used in those analyses be changed to conform to the requirements of these regulations, and

(2) A reconciliation between the cash flows used in the IRR computations and

all forecasted data presented in the application, both before (for the base case) and after (for the project). This reconciliation must indicate what inflation factor or factors were used in developing the forecasted financial statements as compared to the constant dollar figures used in the IRR computations. The reconciliation must also show how each of the individual parts and subparts of the project relates to the applicant's forecasted financial statements.

* * * * *

3. In § 298.3, paragraph (d)(3) is removed and (d)(2) is revised to read as follows:

§ 298.3 Application.

* * * * *

(d) * * *

(2) The Secretary, Maritime Administration, shall make a determination as to any claim of exemption at the time a request is made for the information pursuant to the Freedom of Information Act. If the Secretary, Maritime Administration makes a determination unfavorable to the applicant as to any item of information in the application or amendment, the applicant will be advised that the Maritime Administration will not honor the request for confidentiality at the time of any request for production of information made pursuant to the Freedom of Information Act by third parties.

* * * * *

4. Section 298.42 is amended by adding paragraph (c) to read as follows:

§ 298.42 Reporting requirements—financial statement.

(c) The Company shall furnish, along with its semi-annual report, a letter of confirmation issued by its insurance underwriter(s) or broker(s) that the Company has paid premiums on insurance applicable to the preservation, protection and operation of the asset, which information shall state the term for which the insurance is in force.

5. Part 298 is amended by adding Appendix A and B to Subpart B to read as follows:

Appendix A—Selected Cash Flow Impacts

Investments usually affect the investor's cash flow by changing some of the following things:

Use of assets.

Labor requirements.

Requirements for trailers, and containers.

Energy consumption.

Expenditures needed to meet legal requirements.

Salvage value.

While this list is not exhaustive it does identify the common cash flow impacts.

Some of the items listed are almost costs of projects or base cases, rather than benefits. Others, such as salvage items, however, may be either project or base case benefits or costs, depending on the particular situation.

Use of Assets

Characteristic Actions: Assets are often released for sale or alternative uses when they are replaced or made unnecessary by new assets.

Monetary Value: The value of an asset released by an action depends on what will be done with it. Depending on the particular circumstances, any of the following might be involved: Payment received from selling the asset; a multi-year stream of income produced by the asset in some use; tax paid on the sale of the asset; expenditures for dismantling and/or moving the asset; recapture by the IRS of investment tax credit taken when the asset was purchased.

In cases in which the asset is transferred to another use which provides income over several years, the effect of releasing the asset extends over several years, and must be expressed as a series of annual cash flows, rather than a lump sum.

Labor Requirements

Characteristic Actions: Labor requirements are often reduced by automation or facility consolidation.

Physical Units: Man-hours, number of employees.

Monetary Value: The value of labor depends on the particular situation. If the action results in a change in the number of employees or in overtime hours, the wages and fringe benefits associated with that change directly affect the cash flow.

Requirements for Trailers and Containers

Characteristic Actions: Actions which change turnaround time.

Energy Consumption

Characteristic Actions: Actions changing efficiency.

Monetary Value: Found by multiplying the fuel by the current price per unit.

Salvage Value

Characteristic Actions: Acquisition of new assets or disposal of existing assets.

Physical Units: List of the particular assets involved.

Monetary Value: The cash flow resulting from disposing of the assets or using them elsewhere.

When salvage values are small relative to other benefits and costs, and when they are heavily discounted (because they occur far in the future), their impact on the IRR is likely to be negligible. In such cases, the salvage value can be safely ignored.

Expenditures Needed To Meet Legal Requirements

Characteristic Actions: Actions permitting abandonment of old vessels or equipment may reduce the need for such expenditures. New vessels may make some such expenditures unnecessary.

Appendix B—Forms To Be Used in Computing IRR

Form I—Analysis of Capitalized Investment (Constant Dollars)

Applicant _____ Date _____ Portion of investment covered by this sheet _____

Project _____ Sheet No. _____ Depreciation method used _____

This investment would occur in the Project Base case (check one)

Year	(1) Amount capitalized	(2) Depreciation	(3) Tax reduction from depreciation	(4) Tax reduction from investment tax credit	(5) Net cash flow in (out)
1					
2					
3					
4					
5					
6					

Year	(1) Amount capitalized	(2) Depreciation	(3) Tax reduction from depreciation	(4) Tax reduction from investment tax credit	(5) Net cash flow in (out)
7					
8					
9					
10					
11					
12					
13					
14					
15					
Totals					

Instructions:
Use separate forms for portions of the investment which would receive different tax treatment or which would enter service in different years.
Estimate amounts in cols. 1–4 as would be done in reporting to IRS.
Col. 5 equals col. 3 plus col. 4 minus col. 1.

Form II—Analysis of Sale or Retirement of Assets (Constant Dollars)

Applicant _____ Sheet No. _____ Book value of assets at time of sale _____
Project _____ Assets covered by this sheet _____
Date _____ Depreciation method used _____ Depreciation period _____

This sale would occur in the Project Base case (check one)

Year	(1) Sale price	(2) Tax on gain (for tax saving on loss) from disposal	(3) Tax credit recapture	(4) Net cash flow in (out)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Instructions:
Use a separate form for each portion of the assets which would receive different tax treatment or be disposed of at different times.
Estimate amounts in cols. 1–3 as would be done in reporting to the IRS.
Col. 4 equals col. 1 minus col. 2 (plus col. 2 if a tax saving occurs) minus col. 3.

Form III—Analysis of Operating Income

Applicant _____ Date _____ Sheet No. _____
Project _____

Year	(1) Operating revenues	(2) Operating expenses	(3) Pre-tax net operating income	(4) After-tax operating income
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
Totals				

Form IV—Consolidation of Cash Flows (Constant Dollars)

Applicant _____ Date _____ Sheet No. _____
Project _____

Year	Form I totals		Form II totals		Form III totals		(7) Net cash flow in (out)
	(1) Project	(2) Base case	(3) Project	(4) Base case	(5) Project	(6) Base case	
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
Totals							

Instructions: Cols. 1 through 5 are found by summing the right most columns on the indicated forms.

Form V—Computation of IRR (Constant Dollars)

Applicant _____ Date _____ Sheet No. _____
Project _____

Year	(1) Cash flow	Present value		
		(2) Value factor at 10 pct	(3) Value factor at 25 pct	(4) Value factor at 40 pct
1		0.909	0.800	0.714
2		.826	.640	.510
3		.751	.512	.364
4		.633	.410	.260
5		.621	.328	.186
6		.564	.262	.133
7		.513	.210	.095
8		.467	.168	.068
9		.424	.134	.048
10		.386	.107	.035
11		.350	.086	.025
12		.319	.069	.018
13		.290	.055	.013
14		.263	.044	.009
15		.239	.035	.006
Total				

Present Value of Cash Flow Stream
IRR = _____

Instructions:
1. Col. 1 is brought from form IV col. 7.
2. Cols. 2, 3, and 4 are found by multiplying col. 1 each time by the indicated factor.

Dated: August 9, 1985.

Murray A. Bloom,

Assistant Secretary, Maritime Administration.

[FR Doc. 85-19412 Filed 8-15-85; 8:45 am]

BILLING CODE 4910-81-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 706 and 715

[AIDAR Notice 85-8]

Acquisition Regulation Concerning Competition in Contracting and Miscellaneous Amendments

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation is being amended to finalize the interim rule (AIDAR Notice 85-5, published in the April 24, 1985 **Federal Register**) implementing the Competition in Contracting Act of 1984 (CICA) under the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: GC/CCM, Mr. Kenneth E. Fries, telephone (202) 632-1170.

SUPPLEMENTARY INFORMATION: On April 24, 1985, AIDAR Notice 85-5 was published as an interim rule and request for comment (50 FR 16086). Three comments were received during the comment period that questioned the policy in 706.101-70 and the selection procedures in 715.613-70 and 715.613-71. The commentors contended that the policy and selection procedures did not meet the CICA requirement that the marketplace be used to ensure full and open competition. We have made modifications which take those concerns into account. The following changes have been made to the interim rule:

—New coverage has been added to the policy statement in 706.101-70 to make it clear that procurements under 715.613-70 and 715.613-71 must be publicized as required by FAR 5.201:

—The term "required skills" has been deleted and the required institutional relationship has been clarified; and
—The synopsizing requirements of FAR 5.201 have been made explicit by the addition of language to 715.613–70(d)(3) and 715.613–71(e)(4).

We believe these changes are in keeping with the Congressional intent of the CICA and adequately address the commentors' concerns.

We have determined that the changes being made by this Notice are not significant or major changes as defined by FAR 1.303(b) or 1.501, or E.O. 12291. The subject matter of Notice was submitted for OMB review under OMB Bulletin No. 85–7 and issued for public comment as AIDAR Notice 85–5, published in the April 24, 1985 **Federal Register** (50 FR 16086). This Notice addresses the public comments received, within that framework.

As required by the Regulatory Flexibility Act, it is hereby certified that this Notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 706 and 715

Government procurement.

The interim rule published as AIDAR Notice 85–5 in the April 24, 1985 **Federal Register** (50 FR 16086) is adopted as final, with the following changes:

1. The authority citations in Parts 706 and 715 are unchanged, and continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended: E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

PART 706—COMPETITION REQUIREMENTS

Subpart 706.1—Full and Open Competition

2. Section 706.101–70 is revised to read as follows:

706.101–70 Policy.

The selection procedures in 715.613–70 and 715.613–71 of this chapter meet the requirement for full and open competition when the determinations required by 715.613–70(c) and 715.613–71(b)(1)(ii) are properly made. No other justifications or approvals are required.

PART 715—CONTRACTING BY NEGOTIATION

Subpart 715.6—Source Selection

3. Section 715.613–70, Educational institution and international research center selection procedure, is amended by revising paragraphs (a); (c); and (d) (1), (2), (3), (5), and (8), as follows:

715.613–70 Educational institution and international research center selection procedure.

(a) *Scope of subsection.* This subsection prescribes policies and procedures for the selection of contractors to perform projects which have been determined to require an institutional relationship with an educational institution or international research center (see paragraphs (b) and (c) of this subsection.

* * * * *

(c) *Applicability.* The provisions of this subsection are applicable when it has been determined by the project office, with the approval of the contracting officer, that the required institutional relationship (i.e., the prime contractor must have the institutional commitment and capacity to provide research, training, or extension services under an ongoing academic or international research program which will continue at least throughout the life of the contract) is available only from educational institutions or international research centers. This subsection is not applicable to contracts for collaborative assistance (see 715.613–71 of this subpart), or for architect-engineer services (see AIDAR 736.6 and FAR 36.6).

(d) *Solicitation, evaluation, and selection procedures.* (1) A sufficient number of sources shall be solicited to ensure full and open competition; this requirement shall be deemed satisfied when a contractor is selected under the procedures of this subsection.

(2) Following the approval of the contracting officer in the decision that the required institutional relationship is available only from an educational institution or international research center (see paragraph (c) of this section), the project office shall:

(i) Prepare selection criteria for evaluation of potential contractors for use in preparing the source list, determining predominantly qualified sources, and selecting the contractor;

(ii) Prepare an intitial list of sources considered qualified to perform the proposed project;

(iii) Provide a statement providing a description of qualifications and areas of expertise considered essential, a statement of work, estimate of personnel requirements, special requirements (logistic support, government furnished property, and so forth) for the contracting officer's use in preparing the request for technical proposal (RFTP).

(iv) Send a memorandum incorporating paragraphs (d)(2)(i) through (iii) of this section, together with the "Action" copy of the PIO/T to the contracting officer, requesting him/her to prepare and distribute the RFTP.

(3) Upon receipt and acceptance of the project officer's request, the contracting officer shall prepare the RFTP. The RFTP shall contain sufficient information to enable an offeror to submit a responsive and complete technical proposal, this includes a definitive statement of work, an estimate of the personnel required, and special provisions (such as logistic support, government furnished equipment, and so forth), a proposed contract format, and evaluation criteria. No cost or pricing data will be requested or required by the RFTP. The RFTP will be distributed to the sources recommended by the project office, and to others, if appropriate. The RFTP will be synopsized, as required by FAR 5.201, and will normally allow a minimum of 60 days for preparation and submission of a proposal.

* * * * *

(5) The evaluation committee will evaluate all proposals in accordance with the criteria set forth in the RFTP, and will prepare a selection memorandum which shall:

(i) State the evaluation criteria;

(ii) List all of the sources whose proposals were reviewed:

(iii) Report on the ranking and rationale therefor for all proposals;

(iv) Indicate the sources considered best qualified.

* * * * *

(8) If the selection memorandum is approved, the contracting officer shall obtain cost, pricing, and other necessary data from the selected sources and shall conduct negotiations with said sources. If a satisfactory contract cannot be obtained, the contracting officer will so advise the evaluation committee. The evaluation committee may then recommend alternate sources.

4. Section 715.613–71, Collaborative assistance selection procedure, is amended by revising paragraphs (b)(1)(ii); (d)(2); and (e)(1), (2)(ii) and (iii), (3)(iii), (4), (5), and (7), as follows:

§ 715.613–71 Collaborative assistance selection procedure.

* * * * *

(b) *Definition.*

(1) * * *

(ii) The required institutional relationship (i.e., the prime contractor must have the institutional commitment and capacity to provide research, training, or extension services under an ongoing academic, international research, or cooperative development

program which will continue at least throughout the life of the contract) has been determined by the project office, with the approval of the contracting officer, to be available only from an educational institution, international research center (as defined in 714.613–70(b) of this subpart), or cooperative development organization (which are organizations recognized and listed as such by the Assistant Administrator, Bureau of Food for Peace and Voluntary Assistance).

* * * * *

(d) *Determination.*

* * * * *

(2) Based upon this preliminary finding, the project office shall establish an evaluation panel consisting of a representative of the project office as chairman; a representative of the Bureau for Science and Technology, for projects where an institutional relationship with an educational institution or international research center is deemed necessary; a representative of the Bureau for Food for Peace and Voluntary Assistance, for projects where an institutional relationship with a cooperative development organization is deemed necessary; a representative of the contracting officer; and any other representatives considered appropriate by the chairman.

* * * * *

(e) *Evaluation and selection.*

(1) A sufficient number of sources will be considered to ensure full and open competition; this requirement shall be deemed satisfied when a contractor is selected under the procedures of this subsection.

(2) * * *

(ii) Prepare an initial source list including all potential sources known to have the institutional relationship required by the proposed project; and

(iii) Evaluate the list, using the evaluation criteria previously determined, for the purpose of making a written determination of the sources considered most capable of performing the project.

* * * * *

(3) * * *

(iii) The recommended source list and the rationale therefor, and requesting the contracting officer to prepare a request for expressions of interest from the qualified sources.

(4) The contracting officer will prepare a request for expressions of interest (REI), containing sufficient information to permit an offeror to determine its interest in the project, and to discuss the project with AID representatives, if appropriate. The request for expression of interest should include a concise statement of the purpose of the project, any special conditions or qualifications considered important, a brief description of the selection procedure and evaluation criteria which will be used, the proposed contract format, and any other information considered appropriate. The REI will be issued to the sources recommended by the panel, and to others, as appropriate; it will be synopsized, as required by FAR 5.201, and it will normally allow a minimum of 60 days for preparation of an expression of interest. Guidelines for preparation of expressions of interest are contained in Attachment 1 to AIDAR Appendix F.

(5) The contracting officer will transmit all expressions of interest to the evaluation panel for evaluation and selection recommendation. The panel may conduct on site evaluations at its discretion, as part of the evaluation process.

* * * * *

(7) The contracting officer will review the selection recommendation, obtain necessary cost and other data, and proceed to negotiate with the recommended sources.

Dated: August 7, 1985.

John F. Owens,

Procurement Executive.

[FR Doc. 85–19557 Filed 8–15–85; 8:45 am]

BILLING CODE 6116-01-M

Proposed Rules

Federal Register
Vol 50, No. 159
Friday, August 16, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-31]

Proposed Alteration of a Transition Area; Alturas, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter and redefine the transition area at Alturas, California, to provide controlled airspace for aircraft executing a Non-Directional Beacon (NDB) Standard Instrument Approach Procedures at Alturas Municipal Airport. This proposal also describes the transition area using geographical coordinates for clarification. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

DATE: Comments must be received on or before September 15, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

The official docket may be examined in the Office of the Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536-6649.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWP-31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above, both before and after closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 15000 Aviation Boulevard, Hawthorne, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide alteration of the Alturas, California, transition area to accommodate aircraft executing NDB standard instrument approach procedures to Alturas Municipal Airport. Currently, the transition area description uses the NDB for a reference and this proposal uses geographical coordinates to provide a precise description that is easier to depict. The intended effect of this proposal is to ensure segregation of aircraft using approach procedures in instrument weather conditions. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones/transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10954; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Alturas, CA—[Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 41°34'00" N., long 120°46'20" W.; to lat. 41°37'00" N., long. 120°28'40" W.; to lat. 41°11'30" N., long. 120°21'00" W.; to lat.

41°08'45" N., long. 120°38'10" W.; thence to the point of beginning; that airspace extending upward from 1200 feet above the surface beginning at lat. 41°22'10" N., long. 120°58'00" W.; to lat. 41°28'20" N., long. 120°44'20" W.; to lat. 41°19'10" N., long. 120°41'30" W.; to lat. 41°15'00" N., long. 120°51'00" W.; thence along the east edge of V-452 to the point of beginning; and that airspace extending upward from 1200 feet above the surface beginning at lat. 41°33'30" N., long. 120°27'40" W.; to lat. 41°34'30" N., long. 120°20'00" W.; to lat. 41°25'50" N., long. 120°18'30" W.; to lat. 41°25'00" N., long. 120°25'00" W.; thence along the west edge of V-165 to the point of beginning.

Issued in Los Angeles, California on August 6, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85-19510 Filed 8-15-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 84N-0362]

Neurological Devices; Premarket Approval of the Implanted Diaphragmatic/Phrenic Nerve Stimulator

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the implanted diaphragmatic/phrenic nerve stimulator, a medical device. The agency also is summarizing its proposed findings on the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and on the benefits to the public from use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Comments by October 15, 1985; requests for a change in classification by September 3, 1985.

ADDRESS: Written comments or requests for a change in classification to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: E. Carolyn Derrer, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

SUPPLEMENTARY INFORMATION:

Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) provides for the classification of medical devices into one of three regulatory classes: class I, general controls; class II, performance standards; and class III, premarket approval. As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For convenience, this proposal refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish as a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515 of the act, to premarket approval. (Section 515(f) of the act prescribes, as an alternative procedure for premarket approval, development of a PDP, the last stage of which is for FDA to declare that a PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or notice of completion of a PDP until 90 days after FDA's promulgation of a regulation requiring premarket approval for the device. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR Part 812) until the date stipulated by FDA in the regulation requiring premarket approval for that device.

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a regulation to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing (1) the proposed regulation, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved application for premarket approval and the benefit to the public from use of the device, (3) an opportunity for the submission of comments on the proposed regulation and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate reclassification under section 513(e) of the act. If FDA does not initiate reclassification of the device, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed regulation and consideration of any comments received, promulgate a final regulation to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a regulation requiring premarket approval for a preamendments device is made final, section 501(f) of the act requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final regulation, or 30 months after final classification of the device, whichever is later. If a PMA or notice of completion of a PDP for such a device is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final regulation within which an application or notice is required to be filed. The House Report on the amendments states that "the thirty

month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H.R. Rept. No. 94-853, 94th Cong., 2d Sess. 42 (1976).

A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device must have an approved PMA or declared completed PDP before entering the market.

Classification of the Implanted Diaphragmatic/Phrenic Nerve Stimulator

In the **Federal Register** of September 4, 1979 (44 FR 51771), FDA issued a final regulation (21 CFR 882.5830) classifying the implanted diaphragmatic/phrenic nerve stimulator into class III. The preamble to the proposed classification regulation (43 FR 55719; November 28, 1978) included the recommendations of the Neurological Devices Panel (formerly the Neurological Device Section of the Respiratory and Nervous System Devices Panel) (the Panel), an FDA advisory committee, regarding the classification of the implanted diaphragmatic/phrenic nerve stimulator. (On April 24, 1984, the Respiratory and Nervous System Devices Panel was terminated. Concurrently, FDA established the Neurological Devices Panel (see 49 FR 17446; April 24, 1984).) The Panel's recommendation included a summary of the reasons why the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the implanted diaphragmatic/phrenic nerve stimulator. The preamble to the final regulation classifying the device advised that the date by which a PMA for the device (or notice of completion of a PDP) could be required was May 28, 1982, or 90 days after promulgation of the regulation proposed by this document, whichever occurred later.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating regulations requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using these factors, FDA has determined that the implanted diaphragmatic/phrenic nerve stimulator, identified in § 882.5830(a), has a high priority for initiating a proceeding to require premarket approval. Therefore, FDA is commencing a proceeding under section 515(b) of the act to require that the implanted diaphragmatic/phrenic nerve stimulator have an approved PMA or PDP that has been declared completed.

Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the implanted diaphragmatic/phrenic nerve stimulator within 90 days after promulgation of any final regulation based on this proposal. An applicant will be permitted to continue marketing the implanted diaphragmatic/phrenic nerve stimulator during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days, of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final regulation based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any implanted diaphragmatic/phrenic nerve stimulator (1) which is not legally on the market on or before that date or (2) which is legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for this device is not filed with FDA within 90 days after the date of promulgation of any final regulation requiring premarket approval for the implanted diaphragmatic/phrenic nerve stimulator, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

Description of Device

The implanted diaphragmatic/phrenic nerve stimulator is a device that applies an electrical current to a patient's phrenic nerve(s) to cause the diaphragm to contract rhythmically and produce breathing in patients who have hypoventilation (a state in which an abnormally low amount of air enters the lungs) caused by brain stem disease, high cervical spinal cord injury, or chronic lung disease. The device consists of an implanted radiofrequency (RF) receiver, electrodes that are placed around the patient's phrenic nerve, a pocket-sized external RF transmitter, and an external coil (antenna). The RF pulses are transmitted via the antenna through the patient's skin to the subcutaneously placed RF receiver. The receiver converts the RF energy to electrical pulses, which are delivered via lead wires to the electrodes on the phrenic nerve.

The device's electrodes are applied to the phrenic nerve by surgically exposing the nerve. The receiver is implanted under the skin through an incision. A tunnel is made beneath the patient's skin to accommodate the wires that extend from the receiver to the electrode. When stimulation of both phrenic nerves is required, two devices are implanted.

Proposed Findings With Respect To Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the implanted diaphragmatic/phrenic nerve stimulator to have an approved PMA or declared completed PDP and is identifying the benefits to the public from use of the device.

Degree of Risk

Surgical procedures. Implantation of the electrodes requires that the patient's phrenic nerve be exposed either in the cervical area under local anesthetic or by entering the chest through the third intercostal space under general anesthetic. Two additional incisions are

required to implant the receiver and the electrode wires. As with any surgical procedure, complications may occur because of the surgery. Glenn et al. (Ref. 11) reported infections in 5 of 37 (14 percent) quadriplegics implanted with the device. Infection at the site of any of the implanted components usually requires removal of all of the components (Ref. 5). Also, infections can damage the phrenic nerve (Refs. 2 and 3). In general, the reported rate of infection due to the surgery is not unusual for surgical procedures involving device implantation.

Injury to the phrenic nerve. Injury to the phrenic nerve can cause paralysis of the diaphragm (Refs. 3, 11, and 14). Once the phrenic nerve has been damaged, electrical stimulation can no longer be used. As a result, the patient may become totally dependent upon mechanical ventilation, a major cause of morbidity and mortality (Ref. 10). Phrenic nerve injury may be caused by attaching and securing the electrode to the nerve, by mechanical irritation of the nerve by the continuing presence of the electrode, by the electrical current used for stimulation, by infection, or by the formation of scar tissue around the nerve. Glenn et al. (Ref. 11) reported injury to the phrenic nerve from manipulation at the time of placement of the device's electrode in 11 of 37 (30 percent) patients. Kim et al. (Ref. 14) reported severe degeneration in five of seven (71 percent) human phrenic nerves obtained at autopsy and concluded that the injury was due to placement of the implanted diaphragmatic/phrenic nerve stimulator's electrodes on the nerve. Numerous animal and clinical reports have shown that mechanical damage to the nerve can result from the continued presence of the device's electrode (Refs. 3 through 5, 7, 8, 11, 13 through 16, and 22). Glenn et al. (Ref. 3) reported that 11 of 75 (16 percent) phrenic nerves of their patients sustained injury from the physical presence of the device's electrode. One author (Ref. 2) reported that when infection associated with the implanted diaphragmatic/phrenic nerve stimulator involves the phrenic nerve, prolonged nerve conduction times persist for many months following removal of the electrode. Scar tissue from the surgery required to implant the device's electrode also may damage the nerve (Ref. 3).

The electrical current used for stimulation may injure the phrenic nerve (Refs. 3, 19, and 20), and Lieu, Loew, and Hunt (Ref. 16) reported such injury in one patient. Other studies (Refs. 11 and 13 through 15) indicate that stimulation with a relatively low charge density, i.e., using the latest current necessary to effect maximum tidal volume, does not cause injury to the phrenic nerve. Oda et al. (Ref. 19), in a study designed to evaluate the effects of various electrical parameters for diaphragm pacing in dogs, reported that, although injury to the phrenic nerve from monophasic stimulation can occur, a charge density of 3.7 microcoulombs per square centimeter (an adequate charge to stimulate the phrenic nerve) does not result in injury. Glenn et al. (Ref. 11), in a series of 37 patients paced for up to 5 years, concludes that, based on the observation that the average current required to cause minimal contraction of the diaphragm (threshold) has declined after the initial 6 months of treatment, the electrical stimulus does not injure the phrenic nerve (Ref. 11).

Injury to the diaphragm. Repeated stimulation may cause fatigue of the diaphragm muscle and result in permanent damage to the muscle. As with the phrenic nerve, when the diaphragm has been damaged, electrical stimulation can no longer be used, and the patient may become totally dependent upon mechanical ventilation (Ref. 10). Until recently, fatigue of diaphragm muscle has prevented continuous stimulation of one or both hemidiaphragms for more than 12 consecutive hours. In a clinical series of 18 patients, Glenn, Hogan, and Phelps (Ref. 5) reported three deaths (17 percent) related to diaphragm fatigue. Lieu, Loew, and Hunt (Ref. 16) reported widespread diaphragm degeneration in an infant who died after being stimulated continuously for 19 days.

The relationship of diaphragm muscle degeneration to fatigue of the muscle by electrical stimulation has been demonstrated in dogs by Hershberg et al. (Ref. 13) and more recently by Ciesielski, Fukuda, and Glenn (Ref. 1). Hershberg et al. studied animals stimulated with trains of 60 hertz (Hz) pulses repeated 18 to 42 times per minute and found moderate to severe muscle fiber atrophy and necrosis of the diaphragm. Ciesielski and colleagues' study revealed severe structural and biochemical changes resembling those seen in myotonic dystrophy or chronic neurogenic atrophy in the diaphragm muscles of animals who underwent stimulation with 27 to 33 Hz pulses repeated 20 times per minute for 48 to 52 weeks. This damage is irreversible (Refs. 16 and 19).

Several investigators have attempted to evaluate pacing schedules and parameters in dogs to minimize diaphragm fatigue. In a series of 35 dogs, Sato et al. (Ref. 23) studied the comparative effects of unidirectional, alternating bidirectional, cathodal or anodal current in combination with various durations and respiratory rates and concluded that alternating bidirectional current with maximum pulse intervals prolonged effective diaphragm contraction. Oda et al. (Ref. 19) implanted 23 dogs with stimulators and evaluated various pacing parameters to determine which level of current, stimulation waveform, electrode design, pulse frequency, and pulse train repetition rate caused least fatigue of the diaphragm muscle. Results revealed that stimulation at a current level sufficient to produce maximum tidal volume resulted in greater fatigue than stimulation at a lesser current level. Marked differences were noted with the use of different stimulation frequencies and repetition rates: high-frequency, narrow pulse intervals (33 Hz; 30 millisecond) caused rapid and marked fatigue; low-frequency, wide pulse intervals (11 Hz; 90 millisecond) increased tidal volume over time and did not produce any muscle fatigue; a repetition rate of 10 per minute produced less fatigue than a rate of 20 per minute.

Based on animal studies (Refs. 1, 13, 16, 19, and 23), investigators over the past 15 years have reduced the stimulation parameters in an attempt to avoid inducing fatigue of diaphragm muscle. In 1970, Glenn et al. (Ref. 6) reported using 200 microsecond pulses at 60 Hz. The repetition rate used was 15 per minute. Between 1971 and 1981, 17 quadriplegic patients were treated at 25 to 30 Hz at a respiratory rate of 12 to 17 per minute (Ref. 10). In a recent article, Glenn et al. (Ref. 10) reported using 150 microsecond pulses at 7 to 8 Hz with a repetition rate of 5 to 9 per minute for continuous simultaneous stimulation of both hemidiaphragms in five quadriplegic patients; fatigue was not observed in these patients. However, a relatively small amount of air is needed to meet basal tidal-volume requirements in quadriplegia because patients with a generalized paralysis are constantly at rest. It is not known, therefore, whether such low-frequency stimulation and long pulse intervals will provide adequate ventilation in other types of patients.

Upper airway obstruction. Use of the device may induce upper airway obstruction or worsen the obstruction if it is already present. Glenn (Ref. 2) reported on a group of 24 patients with central alveolar hypoventilation who had been implanted with the device, 18 of whom demonstrated upper airway obstruction during sleep. Pacing

accentuated the obstruction in 16 of these patients; in the other 2, pacing induced obstruction. It appears likely that this effect is caused by augmentation of the inspiratory action of the diaphragm, which collapses parts of the upper airway. Airway obstruction may also occur because the inspiratory action of the diaphragm is not coordinated in time with that of the upper airway muscles (Ref. 18).

Interference with demand type cardiac pacemakers. Use of the device has been shown to interfere with the function of some demand type cardiac pacemakers. Wicks, Davison, and Belic (Ref. 25) reported stimulator interference with the function of demand pacemakers in 14 of 27 patients (52 percent). The phrenic nerve stimulator pulses resulted in either temporary inhibition or conversion to the asynchronous mode in the cardiac pacemakers. In 5 of these 27 patients (19 percent), interference was still observed when the transmitter was placed more than 5 centimeters from the pacemaker.

Respiratory arrest. In patients requiring total ventilatory support (e.g., quadriplegics), malfunction or failure of the device could result in death within minutes. Failures are most commonly due to receiver malfunction, breakage of antenna wires, battery depletion, transmitter malfunction, or electrode wire breakage (Ref. 5). In 1977, Glenn et al. (Ref. 8) reported failures of 33 of 86 implanted receivers (38 percent) occurring at an average of 16.8 months after implantation. More recent estimates of failure rates have not been published. Mechanical breakage of the battery and antenna connectors also have been reported as troublesome problems (Refs. 7 and 8). Electrode fracture has been reported in one patient (Ref. 6). Electrical components subjected to the severe environmental stress imposed by biological fluids are particularly at risk for malfunction, and most reported failures of the device have involved the receiver (Ref. 11).

Tissue toxicity. The stimulator is made of materials that are generally recognized to be biocompatible. However, the surface of the implanted device, lead wires, or electrodes may contain material that is not biocompatible, or some of the materials may have unknown constituents that cause subtle changes not recognized in the reported studies. Contaminants may be introduced during manufacture or sterilization of the device. Injury to the phrenic nerve by ethylene oxide residues from gas sterilization of the electrode has been hypothesized in one case (Refs. 2, 6, and 9).

Benefits of the Device

The device has been reported to be beneficial in providing ventilatory assistance in some patients with chronic ventilatory insufficency, central in origin, who are dependent upon mechanical ventilation and in whom function of the phrenic nerves, lungs, and diaphragm is adequate to sustain ventilation by electrical stimulation (Refs. 3, 7, and 15). Patients treated with this device have included quadriplegics, patients with central alveolar hypoventilation from various causes (e.g., encephalitis, brain stem infarct or tumor, Pickwickian syndrome), and one patient with chronic obstructive lung disease (Refs. 2 and 4).

Quadriplegia. Damage to the upper cervical spinal cord above the third to fifth cervical vertebrae (C_3–C_5) results in paralysis of the body below the neck, including the diaphragm and intercostal muscles. Control of the muscles of the upper airway, however, is not affected. This type of injury is usually secondary to motor vehicle or sports accidents or to penetrating injuries such as gunshot wounds (Ref. 18). Because the respiratory muscles are completely paralyzed in these patients, quadriplegics require ventilatory support at all times. Various cumbersome devices are traditionally used to support quadriplegics, e.g., iron lungs or tank respirators.

The implanted diaphragmatic/phrenic nerve stimulator has been used in those quadriplegics where injury to the cervical spinal cord occurred above C_3–C_5, i.e., did not involve the phrenic nerves. Quadriplegics are not generally considered to be candidates for implantation of the device until they have fully recovered from their acute injuries and it has been determined that they will require long-term ventilatory support. Disuse of respiratory muscles in the early months following injury leads to weakened or atrophied diaphragm muscles (Refs. 5 and 18). It is therefore necessary to condition the diaphragm muscles by gradually increasing the time that the stimulator is used (Refs. 3 and 5). This conditioning may take 6 to 8 months or more before a quadriplegic can withstand full-time stimulation (Ref. 3), and some patients never attain full-time stimulation schedules because of diaphragm muscle fatigue. Glenn (Ref. 3) has estimated that the device will provide total ventilatory need in only 40 percent of respiratory paralysis patients. Glenn et al. (Ref. 11) reported a series of 37 quadriplegic patients, in which 13 patients (35 percent) were placed on full-time stimulation schedules. Ten of the 37 patients achieved at least half-time pacing schedules. The remaining 14 patients could not be satisfactorily stimulated.

Because the electrical stimulation is not synchronized with the spontaneous opening of the upper airway, an open tracheostomy is required during sleep to prevent upper airway obstruction. The tracheostomy may be closed during the day.

The primary benefit of electrical stimulation of the phrenic nerve to the quadriplegic patient is freedom from mechanical ventilation, which allows the patient to leave the hospital and begin a meaningful rehabilitation program. The social and psychological benefits of freedom from cumbersome mechanical equipment are considered to be important advantages whether these devices are used only on a part-time basis or throughout a 24-hour period (Refs. 7, 12, 17, and 24). Glenn et al. (Refs. 9 and 11) reported quadriplegic patients who, with the use of the device, have been able to resume such normal activities as operating a home business or returning to school.

Central hypoventilation. Central hypoventilation syndromes are characterized by a reduced sensitivity of the respiratory center of the brain that controls breathing. Central hypoventilation may be congenital (in neonates), idiopathic (in adults), or due to anatomic damage to the respiratory center as a result of surgery, infection, cardiovascular accidents, tumors, or secondary to prolonged hypoxia (Ref. 18).

Some central hypoventilation patients are adequately ventilated during waking hours, but experience significant hypoventilation or periods where breathing ceases during sleep (sleep apnea). Sleep apnea can result in respiratory arrest and death. Other patients may be chronically hypoventilated at all times. These patients may maintain a somnolent or cyanotic state and experience recurrent episodes of heart failure. Traditional forms of treatment include rocking beds and mechanical ventilators.

Glenn (Ref. 2) reported successful treatment of 35 of 36 (97 percent) patients with central hypoventilation from a variety of causes with the implanted diaphragmatic/phrenic nerve stimulator. Thirty-three of these patients required stimulation only during sleep. Although two authors (Refs. 19 and 20) state that full-time ventilatory support cannot be provided by the device in young children with congenital central hypoventilation because of the immaturity of the lungs, chest wall, and diaphram, Radecki and Tomatis (Ref. 21)

reported the continuous bilateral stimulation of a single infant for 142 days. Infants, however, require bilateral stimulation and cannot, at present, be stimulated continuously for 24 hours, even when their condition requires total ventilatory support (Ref. 21). It is not known how the implanted device will adapt to the growing structures of children and whether nerve function will be comprised later in the children's life (Ref. 18).

The device prevents respiratory arrest during sleep in patients who have sleep-induced apnea. Glenn (Ref. 2) reported increased alertness during waking hours, lessening of cyanosis, reduction in pulmonary hypertension, and elimination of right heart failure (Refs. 2 through 4) in central hypoventilation patients. As with quadriplegic patients, the social and psychological benefits to central hypoventilation patients of not being dependent upon cumbersome mechanical equipment are considered to be important advantages (Refs. 7, 12, 17, and 24).

Chronic obstructive lung disease. Obstructive lung disease is characterized by decreased ability to exhale all air from the lungs. Causes include chronic bronchitis, asthma, emphysema, and cystic fibrosis. Although oxygen therapy has been shown to improve cardiac and cerebral function and partially reduce pulmonary arterial hypertension in patients with chronic bronchitis and emphysema (Ref. 4), these patients frequently experience ventilatory depression during oxygen administration (Refs. 2 through 4). Glenn, Gee, and Schacter (Ref. 4) reported that use of the device in properly selected obstructive lung disease patients not only ameliorates carbon dioxide retention and augments ventilation, but, more importantly, prevents ventilatory depression during oxygen administration. This allows safe oxygenation which may prevent fatal apneic episodes when pulmonary function worsens later in the course of the disease.

Discussion of Risks and Benefits

FDA classified the device into class III because insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has weighed the probable benefits to health from use of the device and believes that the studies discussed above present evidence of significant risks associated with the use of the device and raise questions about whether probable benefits from use of the device outweigh risks of injury from such use.

FDA believes that use of this device carries a significant risk of permanent damage to the phrenic nerve, which could severely affect the health of the patient or even result in death. This risk appears to be inherent in the implantation procedure and also has been reported to occur in a large percentage of patients as a result of the physical presence of the device. Although damage to the phrenic nerve caused by the electrical current has been reported, FDA believes that there is evidence that electrical damage to the phrenic nerve may be avoided by carefully limiting the charge density of the stimulus.

FDA also believes that use of the device carries a significant risk of permanent damage to the muscle of the diaphragm from fatigue, which could severely affect the health of the patient or even result in death. Recent evidence suggests that damage to the diaphragm caused by fatigue of the muscle may be minimized by use of very low-frequency pulses, maximum pulse widths, and minimum repetition rates required to adequately ventilate the patient (Ref. 10). This finding, however, has not been confirmed.

Published reports indicate that the device is not suitable for use in all patients with respiratory insufficiency. The device has been reported to exacerbate or induce some conditions (e.g., upper airway obstruction) (Ref. 2). The device can interfere with other implanted devices such as demand type cardiac pacemakers. Some physicians (Ref. 4) consider chronic obstructive lung disease patients to be candidates for the stimulator only if they have a significant hemodynamically compromising hypoxia, if the failure or the presence of a high risk from well-controlled oxygen therapy is evident, if they have an adequate expiratory flow, and if adequate function of the diaphragm can be clearly demonstrated. Most investigators report that young children, who all require continuous bilateral stimulation, cannot be adequately ventilated by use of this device (Refs. 16, 18, and 19). FDA therefore believes that appropriate patient selection is extremely important. FDA believes, however, that there may be conditions for which the probable benefits of the device outweigh the risk of using the device.

Accordingly, FDA believes that the question of proper stimulation parameters for this device has not been resolved. FDA also believes that appropriate patient selection criteria that do not expose patients to unreasonable risks of serious injury or death remain to be established.

For all these reasons, FDA believes that the implanted diaphragmatic/phrenic nerve stimulator should undergo premarket approval to reduce or eliminate the risks associated with the device and to determine whether the risks or using the device are balanced by the benefits to the patient.

Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 of FDA's regulations governing classification of devices (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in FDA's proposals to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402, 53411; November 26, 1982).

A request for a change in the classification of the implanted diaphragmatic/phrenic nerve stimulator is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by September 3, 1985.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in classification of the implanted cerebellar stimulator is submitted, the agency will by October 15, 1985, after consultation with the appropriate FDA advisory committee, and by an order published in the **Federal Register**, either deny the request or given notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 of the regulations.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested

persons between 9 a.m. and 4 p.m., Monday through Friday.

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9. Glenn, W.W.L., et al., "Total Ventilatory Support in a Quadriplegic Patient with Radiofrequency Electrophrenic Respiration," *New England Journal of Medicine*, 286(10): 513–516, 1972.

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13. Hershberg, P. I., et al., "Histologic changes in Continuous, Long-term Electrical Stimulation of a Peripheral Nerve," *Institute of Electrical and Electronic Engineers Transactions on Biomedical Engineering*, 14: 109–114, 1967.

14. Kim, J. H., et al., "Diaphragm Pacing. Histopathological Changes in the Phrenic Nerve Following Long-term Electrical Stimulation," *Journal of Thoracic and Cardiovascular Surgery*, 72(4): 602–608, 1976.

15. Kim, J.H., et al., "Light and Electron Microscopic Studies of Phrenic Nerves After Long-term Electrical Stimulation," *Journal of Neurosurgery*, 58(1): 84–91, 1983.

16. Lieu, H.M., J.M. Loew, and C.R.E. Hunt, "Congenital Central Hypoventilation Syndrome: A Pathological Study of the Neuromuscular System," *Neurology*, 28: 1013–1018, 1978.

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18. Nochomovitz, M.L., "Electrical Activation of Respiration," Engineering in Medicine and Biology Magazine, June 27–31, 1983.

19. Oda, T., et al., "Evaluation of Electrical Parameters for Diaphragm Pacing: An Experimental Study," *Journal of Surgical Research*, 30: 142–153, 1981.

20. Pudenz, R.H., "Adverse Effects of Electrical Energy Applied to the Nervous System," *Neurosurgery*, 1: 190–197, 1977.

21. Radecki, L.L., and L.A. Tomatis, "Continuous Bilateral Electrophrenic Pacing in an Infant with Total Diaphragmatic Paralysis," *Journal of Pediatrics*, 88: 969–971, 1976.

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24. Vanderlinden, R.G., et al., "Electrophrenic Respiration in Quadriplegia," *Canadian Nurse*, 70(1): 1–4, 1974.

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Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this proposed regulation in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. The agency believes that only one small firm will be affected by this proposed regulation. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed regulation would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final regulation based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 882

Medical devices, Neurological devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 882 be amended as follows:

PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR Part 882 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; Sections 882.5820(c), 882.5830(c), and 882.5840(c) also issued under secs. 501, 515, 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)).

2. In § 882.5830 by adding new paragraph (c), to read as follows:

§ 882.5830 Implanted diaphragmatic/phrenic nerve stimulator.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with FDA on or before (date to be 90 days after date of promulgation of final regulation) for any implanted diaphragmatic/phrenic nerve stimulator that was in commercial distribution before May 28, 1976, or that has on or before (date to be 90 days after date of promulgation of final regulation) been found to be substantially equivalent to an implanted diaphragmatic/phrenic nerve stimulator that was in commercial distribution before May 28, 1976. Any other implanted diaphragmatic/phrenic nerve stimulator shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Interested persons may, on or before October 15, 1985, submit written comments regarding this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before September 3, 1985, submit to the Dockets Management Branch written requests to change the classification of the implanted diaphragmatic/phrenic nerve stimulator. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19517 Filed 8-15-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 50716-5116]

Variety Naming Requirements for Plant Patent Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent and Trademark Office proposes to amend certain of the rules of practice for plant patent applications. Under the proposed rules of practice, an applicant for a plant patent will, in addition to the present requirements for obtaining a plant patent, also be required to designate and record a variety name for the plant. These proposed rules fulfill an obligation imposed by the Convention of the International Union for the Protection of New Plant Varieties, to which the United States adheres.

DATE: Comments on the proposed rules must be submitted by October 31, 1985, to assure their consideration in formulating the rules put into effect.

ADDRESSES: Address comments to the Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231. All comments received will be made publicly available in the Patent and Trademark Office, Crystal Plaza, Arlington, Virginia, Room 3-11C28. No public hearing is planned.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley D. Schlosser, Office of Legislation and International Affairs, by telephone at (703) 557-3065 or by mail addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The requirement for designating a variety by name and recording that name arises from Article 13 of the UPOV (International Union for the Protection of New Plant Varieties) Convention. This Convention became applicable to the United States on November 8, 1981. In the terminology of Article 13, this designation and recordation is referred to as the registration of the variety name. Registration is required for each plant variety protected in a member state of this Union (hereafter referred to as a member state) either by means of a plant patent or an award of breeders' rights.

It is left to each member state to determine exactly how registration will be effected. For the United States, the issuance of a plant patent, including in the patent the name of the variety patented, will constitute registration. The patent examining process will include a consideration of the suitability for registration of the proposed variety name.

A variety name will be registered if it is judged by the Patent and Trademark Office as not likely to mislead or cause confusion regarding the characteristics, value or identity of the variety, or the identity of the breeder. Also, a variety name to the registered must not impair or conflict with any trademark or another name in which other person has a proprietary right. Ordinarily, the patent applicant wil be required to register the same variety name (or a translation thereof) for a particular variety in each member sate adhering to the UPOV Convention. These are, in broad terms, the conditions set forth in UPOV Article 13 for the registration of a variety name.

A variety name is the generic name by which the variety is popularly or commonly known. The commercial use of a registered variety name, however, will not be regulated by the Patent and Trademark Office. Rather, use of a variety name, whether registered or unregistered (in cases where the variety is not patented), will be regulated by any applicable state and federal unfair competition and trademark laws.

Variety names are referred to in the UPOV Convention as "variety denominations" and often in plant breeding circles as "cultivar names." For the purposes of these rules of practice, the three terms are considered synonymous.

Attention is called to the Commissioner's Notice (Federal Register/Vol. 46, No. 22/October 20, 1981) stating that appropriate rules for the naming of plant varieties, as required by the UPOV Convention, will be issued. The Federal Register Notice also provides information about interim procedures to be followed until rules of practice are adopted.

The proposed amendments to the rules of practice when finally adopted will replace the interim procedures announced in the Federal Register on October 20, 1981, in regard to the patenting in the United States of asexually reproduced plants. These proposed amendments will not apply, however, to any protection sought under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), administered by the Department of Agriculture and applying only to sexually reproduced plant varieties.

The proposed amendment to § 1.163 prescribes the obligation (as set forth in the UPOV Convention) for registering the name of each patented plant variety. The proposed name will be selected by the patent applicant for inclusion in the title of the application, where it will be easiest for a reader of the patent to find. It will be judged for registrability by the examiner to whom the patent application is assigned for examination, who, however, may receive advice or information from officials of the trademark examining operation. As examples of suitable naming practice, note the titles of plant patents Nos. 5,413 and 5,414, "Plum Tree 'Mr. Paul'" and "Chrysanthemum Plant Named Foxy," respectively.

The requirement for registration applies only to plant patent applications actually filed in the United States on or after November 1, 1981, the date on which the UPOV Convention took effect for the United States, even though the application may be entitled to an earlier United States filing date under the provisions of 35 U.S.C. 120, or claim the right of priority in accordance with 35 U.S.C. 119.

The procedure for judging registrability of a variety name will utilize the Office's compilation of variety names in use in the United States and foreign countries. This compilation has been and will continue to be obtained from horticultural, agricultural, floral and other professional societies, other national examination offices, the UPOV Secretariat, standard references, and other sources. Designation of a variety by name is a formal requirement for obtaining a patent, and will be generally administered in the same manner as other formal requirements.

Proposed new § 1.168(a) sets forth the requirement for naming a variety to be patented. The criteria to be applied will be those set forth in the International Code of Nomenclature for Cultivated Plants—1980. Its articles 1 to 32 provide substantive rules for naming varieties. The other articles, concerned with non-statutory registration authorities, earlier publication, amendment of the Code and other matters unrelated to the registration criteria, of course, will not be involved. Copies of the Code are available from any of the following: The International Bureau for Plant Taxonomy and Nomenclature, Tweede

Transitorium, Uithof, Utrecht, Netherlands; the American Horticultural Society, Mt. Vernon, Virginia 22121; the Crop Science Society of America, 677 South Sego Rd., Madison, Wisconsin 53711; and the Royal Horticultural Society, Vincent Sq., London, SW IP, 2PE, Great Britain.

Registrability will also take into account the Office's file of both registered trademarks and those proposed for registration. If a conflict exists between a proposed variety name and a registered trademark or one proposed for registration, the variety name will not be registered and a new name will be required.

Proposed § 1.168(b) concerns patent applications failing to include a proposed variety name. The examiner will require the submission of a variety name and set a period for compliance.

Proposed § 1.168 (c) and (d) concern an examiner's refusal to register a proposed variety name. Paragraph (c) requires the applicant, upon a final determination of unregistrability, to submit another variety name. Paragraph (d) assures the applicant's right instead to petition the Commissioner in cases where the proposed name is not accepted. The petition will be subject to a fee and the other requirements of these rules applicable to petitions.

The UPOV Convention requires the breeder to identify the patented variety by the same variety name (or a translation thereof) in all member states. A different name may be registered in a particular member state, however, in cases where the name registered earlier in another member state is unsuitable for registration. The Convention's requirements for the consistent naming of varieties are incorporated in proposed § 1.168(e). The applicant may during the course of prosecuting the application be required to inform the Office of any other names by which the variety is known, either in the United States or foreign countries, and to provide a translation into English of any such names.

Specific criteria for unsuitability cannot always be defined in advance, but must develop on a case-by-case basis. Certain criteria for unsuitability can be stated at the outset, however. Names that are difficult to pronounce by English speakers, names having adverse business connotations, and names in non-English characters are examples of unsuitability. The applicant must when submitting a name for registration different from that used in another member state explain in writing why the name used in that other state is unsuitable.

A patent owner or the assignee of a patent will, at times, learn that the registered variety name conflicts with another person's trademark or other proprietary right, or be ordered by a court to commercialize the variety under another name. At other times, a registered variety name may turn out to conflict with an earlier-registered variety name or one already in use. Also, changes in language or custom may render an earlier-registered variety name unsuitable for commercial use. In these cases, a different or substitute name may be submitted for registration. Proposed § 1.168(f) concerns the issuance of a certificate of correction under 35 U.S.C. 255 for the registration of a substitute name in such situations. The patent owner in applying for the registration of a substitute name will be required to explain in writing why it is necessary to do so.

It is, of course, in the patent applicant's interest to know or learn as early as possible if the proposed variety name conflicts with another's trademark or other proprietary right. Accordingly, proposed § 1.168(g) authorizes the Patent and Trademark Office to publish in the *Trademark Official Gazette* each proposed variety name. The Office will also regularly publish in the *Trademark Official Gazette* lists of registered variety names, and such names will be identified in each plant patent and in the *Patent Official Gazette*.

The publication of proposed variety names should greatly reduce the possibility of later conflicts. Conflicts between proposed variety names and proprietary rights will be resolved in an ex parte manner. No inter partes proceedings will be held to resolve a conflict.

Any substitute name registered for a variety will also be published in the *Trademark Official Gazette*, and a certificate of correction containing the substitute name will be issued. If the patent has been assigned, the opportunity to register a different variety name will be available only to the assignee.

In the event a plant breeder proceeds to protect a plant variety under the provisions of section 101 of the patent laws (title 35, U.S.C.), the variety naming requirements of these proposed rules shall also apply to that patent application. This possibility is acknowledged in the proposed amendment to section 1.71. Applications for the patenting of microorganisms under section 101 will, however, not be subjected to this variety naming requirement.

Article 13 of the UPOV Convention of October 23, 1978, referred to above, reads:

Article 13

Variety Denomination

(1) The variety shall be designated by a denomination destined to be its generic designation. Each member State of the Union shall ensure that subject to paragraph (4) no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the protection.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any member State of the Union, an existing variety of the same botanical species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority referred to in Article 30(1)(b). If it is found that such denomination does not satisfy the requirements of paragraph (2), that authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered at the same time as the title of protection is issued in accordance with the provisions of Article 7.

(4) Prior rights of third parties shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority referred to in Article 30(1)(b) shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted in member States of the Union under the same denomination. The authority referred to in Article 30(1)(b) shall register the denomination so submitted, unless it considers that denomination unsuitable in its State. In the latter case, it may require the breeder to submit another denomination.

(6) The authority referred to in Article 30(1)(b) shall ensure that all the other such authorities are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority referred to in Article 30(1)(b) may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

(7) Any person who, in a member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a variety protected in that State shall be obliged to use the denomination of that variety, even after the expiration of the protection of that variety, in so far as, in accordance with the provisions of paragraph (4), prior rights do not prevent such use.

(8) When the variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

UPOV Article 30(1)(b), referred to in Article 13, reads as follows:

Article 30

Implementation of the Convention on the Domestic Level; Contracts on the Joint Utilisation of Examination Services

(1) Each member State of the Union shall adopt all measures necessary for the application of this Convention; in particular, it shall:

(a) . . .

(b) set up a special authority for the protection of new varieties of plants or entrust such protection to an existing authority;

(c) . . .

Other Considerations: The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. There are no information collection requirements in the proposed rule change.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). The variety naming requirement will impose very little or no extra work on patent applicants (whether small or large businesses or individuals). The rule will help avoid litigation over variety names and trademark rights, which are far more burdensome than the procedures under the proposed rule.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patients.

For the reasons set out in the preamble, 37 CFR Part 1 is proposed to be amended by amending §§ 1.71, 1.163, 1.168 and 1.17 as set forth below. All proposed additions are printed between arrows.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.17 is proposed to be amended by adding the following items in numerical order to the list in paragraph (h) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(h) * * *

►—§1.168(d) For petitioning the Commissioner to register a plant variety name. . . .

—§ 1.168(e) For petitioning the Commissioner to register a substitute plant variety name. . . .◄

* * * * *

3. Section 1.17 is proposed to be amended by adding paragraph (d) to read as follows:

§ 1.71 Detailed description and specification of the invention.

* * * * *

►(d) In the case of an application for the patenting of a plant variety filed under the provisions of section 101 of title 35, United States Code, the requirements for the naming of a variety specified under §§ 1.163 and 1.168 shall apply thereto.◄

4. Section 1.163 is proposed to be amended by adding the following three sentences at the end of paragraph (a):

§ 1.163 Specification

(a) * * *►The title of the invention must include a proposed name for the variety to be patented, where it may be easily recognized as such. A substitute variety name may be proposed during the pendency of the application provided its consideration will not significantly delay disposition of the application. The granting of the patent will be deemed the registration of the variety name for the patented plant for purposes of complying with Article 13 of the International Convention for the Protection of New Varieties of Plants (UPOV), as revised on October 23, 1978.◄

* * * * *

5. A new § 1.168 is proposed to be added, which reads as follows:

►§ 1.168 Variety name, submission to the Office, examination.

(a) The variety name submitted by the patent applicant under § 1.163 or § 1.71(d) will be examined for compliance with § 1.163 using as guidelines for this examination the cultivar naming requirements of the International Code of Nomenclature for Cultivated Plants—1980.

(b) If a proposed variety name is not included as part of the title of the application, as filed, the examiner will set a period of not less than thirty days for providing such name.

(c) If the examiner determines that a proposed variety name is not suitable for registration, or that the proposed name conflicts with a registered trademark or a trademark proposed for registration, the examiner shall refuse registration and set forth in an Office action the reasons for such refusal. Such reasons shall be included in the examiner's action provided under § 1.104, subject to the provisions of § 1.105. An applicant in disagreement with such refusal may request reconsideration and withdrawal of the refusal, giving the reasons therefor. If the examiner's refusal to register a proposed variety name is repeated and made final, the examiner will at the same time require the applicant to propose another variety name for registration.

(d) After a final requirement by the examiner for submission of a proposed new variety name, the applicant, in addition to making any response due on the remainder of the action, may in lieu of proposing a new variety name petition the Commissioner for review of the examiner's holding together with the fee set forth in § 1.17(h).

(e) The applicant will be required to submit for registration the same variety name (or a translation thereof) as that previously registered or proposed for registration in an earlier filed application for protection of the variety in another UPOV member state. Such applicant may submit another name for registration, however, upon a showing satisfactory to the examiner as to why the name originally submitted in another UPOV member state is unsuitable for registration. During the pendency of an application, the examiner may require the applicant to provide any name for the same variety registered or proposed for registration in other UPOV member states before the United States application was filed. If not in English characters, a translation or transliteration of such name or names may be required. An applicant dissatisfied with the examiner's decision

concerning the unsuitability of a variety name may petition the Commissioner, together with that fee set forth in § 1.17(h).

(f) A patentee, in order to avoid a conflict between a registered variety name and a trademark, or where the registered variety name is likely to be confused with another variety name, or where a registered variety name has acquired an adverse connotation, may propose for registration a substitute variety name for that already registered. Such a proposal shall be in the form of a petition to the Commissioner, together with the fee set forth in § 1.17(h). The proposed substitute name will be examined in the same manner as the name originally registered, and upon registration shall be promptly published in the *Official Gazette*. A certificate of correction indicating such substitute name shall be issued for the patent. If the patent has been assigned, only the assignee of record may apply for registration of a substitute name.

(g) The Commissioner shall upon its receipt in the Office promptly publish in the *Trademark Official Gazette* any variety name proposed for registration and the genus and species of the plant involved. Correspondence from a person other than the patent applicant concerning the registrability of a proposed or registered variety name shall be served on the applicant by such person and a certificate of such service shall appear on the copy of the correspondence filed in the Patent and Trademark Office. Such correspondence will be placed in the official file, and in the case of an application will be considered by the examiner in an ex parte manner during the examination of the application. ◄

Dated: July 11, 1985.

Donald J. Quigg,

Acting Commissioner of Patent and Trademarks.

[FR Doc. 85-19401 Filed 8-15-85; 8:45 am]

BILLING CODE 3510-16-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 85-3]

Cancellation of Completed Registrations

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed regulations.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is considering adoption of a new regulation with respect to cancellation practices and procedures under the Copyright Act of 1976. The effect of the proposed regulation is to specify the conditions under which the Copyright Office will cancel a completed registration form.

DATE: All comments should be received on or before September 16, 1985.

ADDRESSES: Intersted persons should submit ten copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Department DS, Washington, D.C. 20540, or if by hand, to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room 407, First and Independence Ave., SE., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20559, Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION: Cancellation is an action taken by the Copyright Office to expunge an already completed registration. Section 410(b) of the Copyright Act of 1976 provides authority for the Register of Copyrights to refuse registration when he or she determines the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason. Section 410(b) also provides authority for the Register to cancel a completed registration that was made in error or which was made in the wrong classification.

1. Background and Present Practice

Cancellation of registrations of claims in works that are not subject to copyright was established under the 1909 Act, and has continued under the 1976 Act.

In Copyright Office Supplementary Practice No. 15, entitled, "Cancellation Cases," a cancellation case is defined as:

> One in which the number assigned to a completed registration will not be used for that particular work, and an accounting action is therefore necessary. The case may involve either:
>
> (a) Complete elimination of any registration for the work in question; or
>
> (b) A new registration for the work under a different class and number.[1]

As an illustration of (a) above, the practice provides:

> Where it is discovered only after registration that the notice for a published work is fatally defective, the fee is refunded or recredited.[2]

Cancellation Under the 1909 Act

In the past, members of the public have requested the Office to cancel registrations—their own and those made by others—where it was not clear that the registration was invalid. As a result, nearly thirty years ago the Office issued regulations to inform the public of the conditions under which corrections of the record, including cancellations could be made. That regulation, entitled "No Cancellations," provided that—

> No correction or cancellation of a Copyright Office registration or other record will be made (other than a registration or record provisional upon receipt of fee as provided in Section 201(6) after it has been completed *if the facts therein stated agree with those supplied the Office for the purpose of making such record.* However, it shall be within the discretion of the Register of Copyrights to determine if any particular case justifies the placing of an annotation upon any record for the purpose of clarification, explanation, or indication that there exists elsewhere in the records, indexes or correspondence files of the Office, information which has reference to the facts as stated in such record.[3] (Emphasis added.)

This language was interpreted by the Office in a Report which forms a part of the legislative history of the 1976 Act:

> The present Copyright Office Regulations (37 CFR 201.5(a)) allow correction or cancellation of a completed registration only if "the facts therein stated" do not "agree with those supplied to the Office for the purpose of making such record"—in other words, if the Copyright Office itself made an error in registering the claim or failed to catch an error that should have been apparent during its examination of the claim.[4]

The Copyright Office takes seriously the matter of changing completed registration records. And it regards cancellations as the most serious of those changes.[5] In implementating the

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[1] Compendium of Copyright Office Practices (Compendium I), Supplementary Practice No. 15, p. S-48 (1966) [hereinafter Supplementary Practice No. 15]. This administrative staff manual, although available previously for inspection and copying, was first available through the Superintendent of Documents of the Government Printing Office in 1970.

[2] *Id.* The fee is no longer refunded, however, because Pub. L. No. 97-366, 96 Stat. 1759 (October 25, 1982) changed the nature of the copyright fees from a registration service fee to a filing fee.

[3] 37 CFR 201.5(a) (1957) (amended 1978). Also see generally, Advisers, Inc. *v.* Weisen-Hart, Inc., 238 F.2d 706 (6th Cir. 1956), *cert. denied*, 353 U.S. 949 (1957) (regulation is cited, corrective registration presumed valid).

[4] Supplementary Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law, 1965 Revision Bill, Copyright Law Revision, Part 6, 89th Cong., 1st Sess. 120 (Comm. Print 1965) [hereinafter cited as "1965 Supplementary Report of the Register"].

[5] For example, only Section Heads and higher ranking Copyright Office officials can authorize cancellation of a registration.

1976 Act, the Office continued the cancellation practices in effect under the 1909 Act in substantially the same manner.

Cancellations Under the 1976 Act

Section 201.5(a)(2) issued pursuant to the 1976 Act follows the same approach as the former regulation in distinguishing between corrections requested by members of the public and corrections of errors made by the Copyright Office. It provides that:

> No correction or amplification of the information in a basic registration will be made except pursuant to the provisions of this § 201.5. As an exception, where it is discovered that the record of a basic registration contains an error that the Copyright Office itself should have recognized at the time registration was made, the Office will take appropriate measures to rectify its error.[6]

The Office has applied the language "appropriate measures to rectify [the Coypright Office's] error" to include the cancellation practices followed under the 1909 Act. If registration should not have been made at all, because the work is not copyrightable subject matter or the other legal requirements have not been satisfied, the "appropriate measure" is to simulate the action which would have been taken but for the erroneous registration. If the error had not been made, or the erroneous information had not been submitted, registration would have been refused. In such cases, cancellation, operating as a kind of refusal to register, appears the only approrpiate measure to take where the Register believes registration is not permitted by law. In *Bouve v. Twentieth Century Fox Film Corp.*, the court said, "it seems obvious, also, that the Act establishes a wide range of selection within which discretion must be exercised by the Register in determining what he has no power to accept."[7]

Compendium II of the Copyright Office Practices, issued under the 1976 Act,[8] provides that when it is apparent that the basic registration should not have been made, registration will be concelled, giving the following as an example:

> The basic registration states that the work was first published in 1979. The Applicant now asserts that the work as actually first published in 1977. Since copies as first published are required for work first published before 1978, an application for a basic registration accompanied by the required deposit should be submitted. If, however, the work was first published without an acceptable copyright notice, the basic registration will be cancelled.[9]

As it did under the 1909 Act, the Office cancels registrations where the registration fee has not been paid, [10] and where the claim is patently invalid for substantive reasons. The Office additionally cancels registration numbers, as opposed to claims, where the claim has been numbered in the wrong series—for example, an unpublished number (VAu 123–456) is given to a published claim (VA 123–456).[11]

2. Authority to Cancel

Cancellation of registrations for works that are not the subject matter of copyright or that fail to satisfy other legal requirements seems required by section 410 of the Copyright Act. That section requires the Register to refuse to register a claim to copyright in a work that does not constitute copyrightable subject matter, or satisfy the other legal and formal requirements of the Copyright Act.

> In any case in which the Register of Copyrights determines that, in accordance with the provisions of this title, the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal.[12]

Because the Register has no authority to register works in the public domain, there is no alternative except to cancel where the Office discovers such an error only after registration has been made.[13]

Moreover, the current statute accords the certificate of registration prima facie evidence of the validity of the copyright.[14] Unless erroneous registrations are expunged from the records, the integrity of copyright registration records would be seriously compromised, and the justification for the court's reliance on those records would be destroyed.

> . . . [I]f the Copyright Office were to register claims and issue certificates without regard to the copyrightability of the material, the result would be to mislead the applicant and the public. What materials are copyrightable is a rather esoteric question on which the general public is not well informed. Many applications are received in the Copyright Office for the registration of uncopyrightable materials such as titles, names, ideas, mechanical devices, tools, toys and almost anything imaginable, usually under a misapprehension by the applicant of the copyright law. . . . Registration of a copyright claim in such material would lull the applicant into a false sense of security in believing he had copyright protection, instead of seeking advice and other means of protecting his interests; and the public would often be given the false impression that the material is copyrighted. Further consequences also seem evident: the registration records and certificates would be cluttered with unfounded claims; registration records and certificates would be unreliable and would lose much of their probative value for copyright claimants, for other persons dealing with them, and for the courts; and many unfounded claims would probably be the source of litigation.[15]

In the same way, it appears that to refuse to cancel invalid registrations would erode the certificate's presumption of validity, mislead the public, and vex the courts.

3. Proposed Regulations

Although the authority of the Copyright Office to cancel invalid registrations has been exercised since 1909, the regulations of the Office do not, and never have, described the cancellation practice in detail. In order to inform the public more explicitly of the cancellation practices, the Office proposes to adopt regulations that describe the nature of cancellations and codify the practices under which completed registrations will be cancelled. The proposed regulations also provide that the copyright claimant will be given 30 days to present arguments against cancellation, where the proposed action is based on substantive grounds (i.e., the work is not copyrightable subject matter or fails to satisfy the legal and formal requirements of the Act). Where cancellation is required on the ground of an uncollectible check, the Office will inform the claimant that the claim has been cancelled for failure to pay the

[6] 37 CFR 201.5(a)(2)(1978).

[7] Bouve *v.* Twentieth Century Fox Film Corp., 122 F.2d 51 (D.D.C. 1941).

[8] Compendium of Coypright Office Practices, Chapter 15, Corrections and Amplifications of Copyright Office Records, Supplementary Registrations (1984) (Compendium II).

[9] Compendium II, 1507.06(d), 1500–19 (1984).

[10] The Office's initial uncollectible check policy (under the new law) was later amended and notice thereof was published in its commentary issued with the amended regulation. The Office notifies the remitter by letter that the registration is being cancelled because of an uncollectible check. 37 CFR 201.6 (1981), 46 F.R. 30221 (June 5, 1981).

[11] Cancelled numbers represent the majority of the cancellations made. Altogether (except for one class of claims, serials) the Office has cancelled approximately 4300 registrations since Jan. 1, 1978. Of these, it has cancelled at least 130 claims for lack of substantive validity.

[12] 17 U.S.C. 410 (b)(1976).

[13] See generally, Berger, Authority of the Register of Copyrights To Reject Applications For Registration, Copyright Law Revision Study No. 18, 86th Cong., 2d Sess. (Comm. Print 1960) (hereafter, "Berger, Study No. 18").

[14] 17 U.S.C. 410(c)(1976).

[15] Berger, Study No. 18 at 95.

statutory fee.[16] Cancellation of registration *numbers* and reassignment of another number, to correct classification errors will also be taken without prior notification, but the copyright claimant will receive a corrected certificate of registration.

As a rule, a cancellation action will be initiated solely because the Office itself has discovered a material error in the registration, which should have been noticed by the examiner before registration. By this regulation, the Office intends to confirm existing practices. It does not intend to establish a new procedure for adversarial review of completed registrations. The overwhelming bulk of registrations are made free from error and are entitled to prima facie evidentiary weight if made before or within five years of first publication. The Office does not invite, and will generally not respond favorably to, requests to cancel a completed registration by a party other than the owner of copyright.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[17]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Acting Register of Copyrights has determined that this proposed regulation will have no significant impact on small businesses.

[16] Because copies or phonorecords deposited from registration are the property of the United States Government [17 U.S.C. 704(a)], they are not returned if the registration is cancelled.

[17] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 706(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

List of Subjects in 37 CFR Part 201

Claims to copyright, Copyright.

Proposed Regulations

PART 201—[AMENDED]

In consideration of the foregoing, the Copyright Office proposes to amend Part 201 of 37 CFR, Chapter II.

1. The authority citation for Part 201 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.7 also issued under 17 U.S.C. 409, 410.

2. By adding a new § 201.7, to read as follows:

§ 201.7 Cancellation of completed registrations.

(a) *Definition.* Cancellation is an action taken by the Copyright Office where, in order to correct an error of the Office, either the registration for the work is eliminated on the ground the registration is invalid as a matter of law, or the registration number is eliminated and a new registration is made for the work under a different class and number.

(b) *General policy.* The Copyright Office will cancel a completed registration only in those cases where: (1) It is clear that no registration should have been made because the work does not constitute copyrightable subject matter or fails to satisfy the other legal and formal requirements for obtaining copyright; (2) registration may be authorized but the application, deposit material, or fee does not meet the requirements of the law and Copyright Office regulations, and the Office is unable to get the defect corrected; or, (3) an existing registration in the wrong class is to be replaced by a new registration in the correct class.

(c) *Circumstances under which a registration will be cancelled.* (1) Where the Copyright Office becomes aware after registration that a work is not copyrightable, either because the authorship is de minimis or the work does not contain authorship subject to copyright, the registration will be cancelled. The copyright claimant will be notified by correspondence of the proposed cancellation and the reasons therefor, and be given 30 days, from the date the Copyright Office letter is mailed, to show cause in writing why the cancellation should not be made. If the claimant fails to respond within the 30 day period, or if the Office, after considering the response, determines that the registration was made in error and not in accordance with title 17 U.S.C., Chapters 1 through 8, the registration will be cancelled.

(2) When a check received in payment of a registration fee is returned to the Copyright Office marked "insufficient funds" or is otherwise uncollectible, the Copyright Office will immediately cancel any registration(s) for which the dishonored check was submitted and will notify the remitter the registration has been cancelled because the check was returned as uncollectible.

(3) Where registration is made in the wrong class, the Copyright Office will cancel the first registration, replace it with a new registration in the correct class, and issue a corrected certificate.

(4) Where registration has been made for a work which appears to be copyrightable but after registration the Copyright Office becomes aware that, on the administrative record before the Office, the statutory requirements have apparently not been satisfied, or that information essential to registration has been omitted entirely from the application or is questionable, or correct deposit material has not been deposited, the Office will correspond with the copyright claimant in an attempt to secure the required information or deposit material or to clarify the information previously given on the application. If the Copyright Office receives no reply to its correspondence within 30 days of the date the letter is mailed, or the response does not resolve the substantive defect, the registration will be cancelled. The correspondence will include the reason for the cancellation. The following are instances where a completed registration will be cancelled unless the substantive defect in the registration can be cured:

(i) Eligibility for registration has not been established;

(ii) A work was registered more than 5 years after the date of first publication and the deposit copy or phonorecord does not contain a statutory copyright notice;

(iii) The deposit copies or phonorecords of a work published before January 1, 1978 do not contain a copyright notice or the notice is defective;

(iv) A renewal claim was registered after the statutory time limits for registration had apparently expired;

(v) The application and copy(s) or phonorecord(s) do not match each other and the Office cannot locate a copy or phonorecord as described in the application elsewhere in the Copyright Office or the Library of Congress;

(vi) The application for registration does not identify a copyright claimant or it appears from the transfer statement on the application or elsewhere that the

"claimant" named in the application does not have the right to claim copyright;

(vii) A claim to copyright is based on material added to a preexisting work and a reading of the appliction in its totality indicates that there is no copyrightable new material on which to base a claim;

(viii) A work subject to the manufacturing provisions of the Act of 1909 was apparently published in violation of those provisions;

(ix) For a work published after January 1, 1978 the only claimant given on the application was deceased on the date the aplication was certified;

(x) A work is not anonymous or pseudonymous and statements on the application and/or copy vary so much that the author cannot be identified; and

(xi) Statements on the application conflict or are so unclear that the claimant cannot be adequately identified.

(d) *Minor substantive errors.* Where a registration includes minor substantive errors or omissions which would generally have been rectified before registration, the Copyright Office will attempt to rectify the error through correspondence with the remitter. Except in those cases enumerated in paragraph (c) of this section, if the Office is unable for any reason to obtain the correct information or deposit copy, the registration record will be annotated to state the nature of the informality and show that the Copyright Office attempted to correct the registration.

Dated: August 6, 1985.

Donald C. Curran,

Acting Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-18462 Filed 8-15-84; 8:45 am]

BILLING CODE 1410-03-M

POSTAL SERVICE

39 CFR Part 111

Prohibition Against Mailing Odd-Shaped Items in Letter-Size Envelopes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend its regulations to extend the prohibition against mailing odd-shaped items in letter-size envelopes to include items mailed in letter-size envelopes at bulk third-class rates. Odd-shaped items, such as pens and bottle caps, are not permitted in letter-size envelopes Mailed as First-, single piece third-, or fourth-class mail because they jam mail processing equipment and can injure postal employees when an envelope containing an odd-shaped item bursts. The Postal Service is now beginning to use high-speed automated equipment to process bulk third-class mail. Accordingly, the increased risk of damage to other equipment and of injury to postal employees from odd-shaped bulk third-class mail has moved the Postal Service to propose this rule prohibiting odd-shaped items in letter-size envelopes mailed at bulk third-class rates.

DATE: Comments must be received on or before September 26, 1985.

ADDRESS: Written comments should be mailed or delivered to the Office of Mail Classification, Rates and Classification Department, Room 8430, 475 L'Enfant Plaza West SW., Washington, DC 20260-5371. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FUTHER INFORMATION CONTACT: F.E. Gardner, (202) 245-5756.

SUPPLEMENTARY INFORMATION: Section 124.47 of the Domestic Mail Manual provides that pens, bottle caps, and similar odd-shaped items contained in letter-size envelopes may not be mailed as First-, single piece third-, or fourth-class mail. These items are prohibited because they jam mail processing equipment, causing damage both to the equipment and to other mail. They also can injure postal personnel when the envelope contaning an odd-shaped item bursts. Section 121.324 of the Domestic Mail Manual, however, has been interpreted to authorize the mailing of odd-shaped items in letter-size envelopes at bulk third-class rates.

The Postal Service is now making more use of mail processing machinery, including new high-speed automated equipment, to process bulk third-class mail. The increased processing of bulk third-class mail by machine increases the risk of damage to postal equipment and to other mail and of injury to postal personnel by permitting odd-shaped items contained in letter-sized envelopes to be mailed as bulk third-class mail. In addition, since undeliverable-as addressed bulk third-class mail may be processed on automated equipment when it is returned, there is also risk of injury or damage from odd-shaped items contained in letter-sized envelopes when processing returned bulk third-class mail.

In order to prevent the damage and injuries that odd-shaped items contained in letter-size envelopes cause, the Postal Service proposes to amend sections 121.324 and 124.47 to extend the prohibition against such mail to bulk third-class. If adopted, the proposal would require that pens, bottle caps, and similar odd-shaped items would have to be packaged in a way that would preclude processing of such mail on equipment which might be damaged.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3601, 3621, 42 U.S.C. 1973cc-13, 1973cc-14.

PART 121—PACKAGING

2. In 121.32 revise .324 to read as follows:

32. Acceptable containers

* * * * *

.324 Envelopes.

a. *General.* Envelopes may be used as containers for articles when the package can reasonably be expected to be processed and delivered without damage to the contents or other mail:

b. *Letter-Size Envelopes.* Letter-size envelopes are nongusseted, flat envelopes which meet the requirements of 128.2. Envelopes of this type are acceptable as containers for nonrigid stationery and material of a similar nature (See 124.47).

c. *Other Envelopes.* Envelopes exceeding the dimensions described in 128.2 are acceptable for easy loads up to 5 pounds when they are made from envelope paper equivalent to 28 substance weight or greater, or are made from extra-strength materials with a Mullen strength in excess of 90 pounds per square inch. Envelopes designed as photographic film mailers, or gusseted (three dimensional) envelopes are acceptable when they are made from envelope paper equivalent to 24 substance weight or greater.

PART 124—NOMMAILABLE MATTER—ARTICLES AND SUBSTANCES; SPECIAL MAILING RULES

3. In 124.4, revise .47 to read as follows:

.4 Restricted Matter

* * * * *

.47 Odd-Shaped Items in Envelopes. Pens, bottle caps, and similar odd-shaped items are not acceptable in letter-size envelopes because they could burst the envelope and damage mail processing equipment or injure employees. (See 123.431). Such items must be placed in suitable packages that can effectively contain the contents.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-19600 Filed 8-15-85; 8:45 am]

BILLING CODE 7710-12-M.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-6-FBL-2882-9]

Approval and Promulgation of Implementation Plans; Texas Lead Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: As required by section 110(a) of the Clean Air Act and the October 5, 1978 (43 FR 46246), promulgation of national ambient air quality standards (NAAQS) for lead, the State of Texas has submitted revisions to its State Implementation Plan (SIP) for lead for the El Paso area of the State. EPA announced its approval/disapproval action on the El Paso SIP on August 13, 1984 (49 FR 32184). This action announces EPA's proposed approval of the State's request for a two year extension of the attainment date for the lead NAAQS for a limited area in El Paso, Texas. The rest of the Texas lead SIP was previously approved by EPA (except for the Dallas and El Paso part of the SIP) in a **Federal Register** notice published on October 4, 1983 (48 FR 45246).

DATE: Interested persons are invited to submit comments on this proposed action or or before September 16, 1985.

ADDRESSES: Written comments should be sent to John Hepola, Chief, State Implementation Plan (SIP) Section, EPA (6AW-AS), 1201 Elm St., Dallas, TX 75270. Copies of the State submittal is available for public review during normal business hours at the following locations: Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723, and EPA, Region 6, Library, 28th Floor, Interfirst Two Bldg., 1201 Elm Street, Dallas, Texas 75270.

FOR FURTHER INFORMATION CONTACT: John Hepola, State Implementation Plan Section, Air Branch, EPA, Region 6, at (214) 767-1599 or FTS 729-1599.

SUPPLEMENTARY INFORMATION: .

I. Background

On October 5, 1978, the NAAQS for lead was promulgated by EPA (43 FR 46246). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air (μg lead/m3) averaged over a calendar quarter. As required by section 110 of the Clean Air Act (CAA), and the October 5, 1978 promulgation of the NAAQS for lead, all States must submit a SIP which will provide for attainment and maintenance of the lead NAAQS within three years from the date of approval of the plan. Section 110(e) of the Clean Air Act allows EPA to grant up to a two-year extension of the lead NAAQS attainment date if the Governor of a State requests it for a specified area of the State, and if the State's SIP provides a proper justification for the need for a two-year extension (explained below).

On June 12, 1980, the Governor of Texas submitted to EPA the State's SIP for attainment and maintenance of the NAAQS for lead. On October 4, 1983 (48 FR 45246), EPA approved the Texas lead SIP except for the part of the SIP concerning the Dallas and El Paso areas. On June 20, 1984, the Governor of Texas submitted to EPA the State's lead SIP for El Paso County. On August 13, 1984 (49 FR 32184), EPA approved the Texas lead SIP and Regulations for El Paso County, except for a disapproval of one compliance date for the Regulations (explained in the August 13 **Federal Register** notice), and except for a no-action on the lead NAAQS attainment date for El Paso County. Today's notice explains EPA's proposed approval of the State's request for a two-year extension of the lead NAAQS for a limited area around the ASARCO primary lead smelter in El Paso County, Texas. This notice also explains that the attainment date for the main part of El Paso County will be August 13, 1987.

II. Description of the State's Request

The State of Texas submitted to EPA the final lead SIP for El Paso County in a letter dated June 20, 1984, from the Governor of Texas. In that letter, the Governor requested a two-year extension of the lead NAAQS attainment date be granted by EPA for a limited area around the ASARCO smelter in El Paso, pursuant to section 110(e) of the Clean Air Act. The Governor's letter explained that, despite the application of state-of-the-art controls to all stacks at the smelter, and stringent controls on all significant fugitive sources at the ASARCO smelter, values slightly above the lead NAAQS were predicted by dispersion modeling to be possible for areas in Texas in the vicinity of the smelter when the smelter is operating at maximum production. The State provided justification for the request for the two-year extension in the attachments to the Governor's letter. The State explained that Texas Regulation III, as adopted by the Texas Air Control Board (TACB) on February 17, 1984, provides for the implementation of lead emissions control measures at the ASARCO lead and copper smelter in El Paso. The Regulation III provisions ensure that: (A) All point sources (stacks) at ASARCO having the potential to emit significant quantities of lead have emission limitations requiring the use of reasonably available control technology (RACT) such as baghouses, electrostatic precipitators, or scrubbers, and (B) all significant sources of fugitive lead emissions are controlled by RACT methods such as enclosure or local hooding of emission points with routing to a ventilation system, and paving, cleaning, wetting and/or chemical treatment of plant roads and open unpaved plant property.

The State believes that it has developed a control plan for El Paso which requires that all lead control measures which are technically feasible and reasonably available are to be implemented at the ASARCO smelter in El Paso. The State explained that the additional lead control measures required by Regulation III, along with the reductions expected in lead emissions from mobile sources due to the lead-phasedown-in-gasoline Federal program, will result in substantial reductions in ambient lead levels in the El Paso area. The State explained that although state-of-the-art particulate control technology was either currently installed at ASARCO or was required to be installed expeditiously, the results of the State's dispersion modeling predicted that under maximum production operations at ASARCO the lead NAAQS would still be exceeded in the immediate vicinity of the smelter.

The State has submitted to EPA, in a letter dated June 11, 1984, commitments for TACB to do additional studies at the ASARCO-El Paso smelter in order to determine what additional lead control measures are possible and which parts of the smelter are most crucial for the application of additional lead control measures. The studies are scheduled to be completed in late 1986, with TACB committed to decisions in early 1987 as to what additional lead control measures will be adopted by Texas so that a demonstration of attainment of the lead NAAQS in all areas around the smelter can be finalized. The compliance plan for the installation of these additional lead control measures is scheduled to be accomplished no later than July 1988. The additional studies and TACB's commitments to require additional lead control measures have been reviewed and approved by EPA in a rulemaking dated August 13, 1984 (49 FR 32184). The two-year extension request by Texas specifically concerns only the additional lead control measures which TACB will develop for implementation beyond an August 13, 1987 deadline date. By August 13, 1987, EPA expects all control measures to be implemented as specified in the approved SIP. EPA's approval of the Texas lead SIP and the control plans is explained in the August 13, 1984 rulemaking (49 FR 32184).

III. EPA Reasons for Approval

EPA proposes to approve the State's request for a two-year extension of the attainment date for the lead NAAQS in El Paso County. This request was made by the Governor of Texas as required by Section 110(e) of the Federal Clean Air Act. The extension will provide the time necessary for the State to assess the results of the new Regulation III requirements, to determine the need for possible additional controls to attain the lead NAAQS, and to identify and propose adequate control measures as necessary to provide for attainment by the extended attainment date. The State's compliance with each of the requirements of Section 110(e) is demonstrated as follows:

(1) *Section 110(e)(1)(A).*—Requirement—The Administrator must determine that "one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period".

Response—Technical analysis by the staff of the Texas Air Control Board has shown that lead emissions from a major nonferrous smelter operated by ASARCO, Incorporated, and from the use of leaded gasoline in automobiles and other gasoline-powered vehicles account for most of the measured lead concentrations in El Paso. The smelter is the principal contributor to lead concentrations at the ambient monitors closest to the smelter where the highest concentrations have been measured as determined by modeling and by analyses of the monitor filters. Since the use of leaded gasoline is projected to continue to decline with the phase-out of older vehicles and since the smelter is the greatest contributor to the concentrations, the control strategy for attainment of the lead standard is based primarily on lead emission reductions at the ASARCO facility. All point sources (stacks) at the smelter are already equipped with RACT, including baghouses, electrostatic precipitators (ESP's), or ESP's followed by an acid plant. Installation of additional lead control equipment on these point sources at this time is therefore not generally judged to be feasible or reasonable. Nevertheless, some reductions were gained by lowering previously applicable emission limitations for certain baghouses consistent with the demonstrated capabilities of those specific units. Large reductions, however, are expected to result from controlling fugitive lead emissions. The newly adopted Regulation III requirements provide for the installation and implementation of all fugitive emission control equipment and workplace practices determined to be feasible and reasonable for the smelter, such as secondary hoods and associated control equipment installed on the copper converters, improved enclosure and ventilation of the lead blast furnaces, the lead dross reverberatory furnaces, and the lead kettles, plus the paving, cleaning, wetting and/or chemical treatment of plant property.

Even with the implementation of all of these control measures, dispersion modeling done by TACB predicts ambient concentrations slightly above the lead NAAQS if the smelter were to operate at a maximum production rate. This modeling also predicts that emissions from four baghouses in the smelter account for a large portion of the maximum predicted impact after all controls are considered. Since baghouses currently represent the state-of-the-art in particulate control equipment, technology to provide for additional controls necessary to meet the NAAQS is believed to be neither currently available nor expected to become available soon enough to achieve compliance by mid-1987. Nevertheless, the plan comtemplates development of such additional control measures as necessary to attain the standard, as committed by Texas to EPA in a letter dated June 11, 1984.

(2) *Section 110(e)(1)(B).*—Requirement—The Administrator must determine that "the State has considered and applied as a part of its plan, reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved".

Response—The Texas Air Control Board has studied all sources of lead emissions in the ambient air in the El Paso area and has determined that control of lead emissions from the major nonferrous smelter is the only means available to reduce emissions adequately to attain the primary NAAQS for lead in El Paso County. The recently adopted Regulation III requirements will implement all feasible and reasonable technology based controls at the smelter. However, the State submittal did not discuss the possible use of curtailments in production rate, or hours of operation, or other similar measures that might result in attainment within 3 years as alternative means of reducing emissions. Prior to EPA taking final action approving this extension, the State must submit adequate justification to EPA indicating why such measures are not appropriate alternative means of reducing emissions either as permanent control measures or at least during the period following the three-year attainment date while the State completes action on other control measures to achieve compliance. If the State fails to provide such justification, or if the justification it submits is determined by EPA to be inadequate, EPA will disapprove the State's request for a two-year extension of the attainment date and may provide for additional controls through federal rulemaking. The TACB has indicated that they will submit the necessary justification within four months. (See additional discussion under EPA ACTION.)

The dispersion modeling performed by TACB was consistent with EPA guidelines, and predicted that the lead NAAQS may be exceeded slightly at maximum smelter production rates after all currently required controls are

implemented. Accordingly, attainment within three years cannot currently be predicted using EPA-approved methodology. However, considering the substantial reductions in predicted impact from 33.8 μg/m3 to 1.99 μg/m3 and the uncertainty in dispersion model predictions, attainment of the standard may, in fact, be achieved. Whether the standard is achieved or not, all technology based controls currently identified as being feasible and reasonable are being applied. As committed to in the June 11 letter, additional studies will be conducted by Texas for the purpose of refining the predictions of ambient lead concentrations to determine if currently proposed controls will, in fact, result in attainment of the standard. The studies will also focus on identifying additional controls that could be applied to the smelter to provide for attainment of the NAAQS.

(3) *Section 110(e)(2)(A).*—Requirement—The Administrator must determine that the State plan provides for "application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period".

Response—This requirement is believed to be met because there are no lead sources subject to the control of the TACB, other than the smelter and vehicles, which impact the affected area which is exceeding the lead NAAQS. The State plan, as submitted on Feb. 17, 1984, did not provide for application of the provisions of the plan requiring secondary hooding and associated control equipment on the copper converters within three years after approval of the plan. However, this deficiency is being addressed through federal rulemaking. (See 50 FR 493 (January 4, 1985).)

(4) *Section 110(e)(2)(B).*—Requirement—The Administrator must determine that the State plan provides for "such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances."

Response—EPA believes that the currently approved Texas SIP provides for implementation of all technology based controls at the smelter which appear to be feasible and reasonable at this time. The availability of other interim mesures of control (e.g., curtailment) which would reduce the predicted lead concentrations in the area immediately around the smelter must be addressed by the State in order for EPA to approve the extension. (See discussion under Item II above.)

IV. Extent of Attainment Date Extension Area

The extensive dispersion modeling that Texas did for the ASARCO facility demonstrate that for most of El Paso County in Texas, and for all of the Anapra area in New Mexico (which is across the State boundary to the West of the Smelter), the lead NAAQS would be attained and maintained by the implementation of the lead control measures required in the final Texas lead SIP. The Texas dispersion modeling did predict, for maximum production at the smelter, that there is the possibility of exceedances in a small area directly around the smelter even after all SIP control measures are installed by August 13, 1987. The dimensions of the area are delineated by the modeling, and include an area which extends outward from the ASARCO smelter's copper stack: 0.5 Km to the West and South of the copper stack, 2.0 Km to the North and East of the copper stack, and 1.5 Km to the Southeast of the copper stack. These are the dimensions which EPA is using to identify the area in El Paso for which a two year extension of the lead NAAQS is being considered for approval, allowing attainment up to August 13, 1989. As predicted by modeling, all other parts of El Paso County, plus all areas across the State line in New Mexico, will be in attainment of the lead NAAQS by August 13, 1987, when all currently required lead control equipment should be installed at the ASARCO smelter in El Paso.

EPA Action

EPA has reviewed Texas' request for a two year extension of the date for attaining the lead NAAQS in El Paso, and EPA is proposing to approve an extension to August 13, 1989 for a limited area around the ASARCO smelter in El Paso. However, as indicated above, in order for EPA to fully approve this extension request, the State must address the issue of the use of curtailments and other similar measures that might result in attainment within 3 years as a possible alternative means of reducing emissions either as a permanent control measure or at least during the period following the 3 year attainment date while the State completes action on other control measures to achieve compliance. EPA with this notice is requesting the TACB to submit such justification within four months of today. Failure to provide the necessary justification or failure to provide adequate justification, will result in EPA taking a disapproval action on the extension request. A copy of the State's submittal will be made available to anyone requesting it. EPA requests that anyone wishing to receive a copy notify the Regional Office by the date listed in the **DATES** section so that copies can be provided to interested parties as soon as they are available. On receipt of the justification, the comment period will be reopened for a short time.

The area to which the extension is applicable includes the part of El Paso County which is: 0.5 Km to the West and South from the ASARCO's copper stack, 2.0 Km to the North and East from the smelter's copper stack, and 1.5 Km to the Southeast from the smelter's copper stack. EPA proposes to approve the request that the attainment date for the lead NAAQS for that area to be August 13, 1989. EPA proposes to approve the lead attainment date for the rest of El Paso to be August 13, 1987.

EPA proposes approval of the request for a two year extension of the attainment date for lead in the El Paso part of the Texas lead SIP, and advises the public that interested persons may participate by submitting written comments to the Region 6 office. Comments received on or before the date listed in the **DATES** section will be considered. Comments received will be available for public inspection at the EPA Region 6 Office listed in the **ADDRESSES** section of this notice.

The Administrator's final decision to approve or disapprove the request for extension of the lead attainment date will be based on the comments received, the State's response to the request for additional information on curtailments as alternative means of reducing emissions and on whether the two year extension request meets the requirements of sections 110 (a) and (e) of the Clean Air Act and 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (Sec. 46 FR 8709.)

Lists of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter Carbon monoxide, Hydrocarbons, and Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: August 9, 1985.

Dick Whittington,

Regional Administrator.

[FR Doc. 85-19587 Filed 8-15-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2882-6]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a site-specific revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP) as it applied to the Villa Grove Farmers Elevator Company (Villa Grove), which is located in Bongard, Champaign County, Illinois. The revision would allow Villa Grove to delay compliance with requirements of Illinois Rule 203(d)(8)(B)(ii) until September 1, 1987. This action is being taken in response to a February 6, 1985, request from the State of Illinois.

DATE: Comments on this revision and on the proposed USEPA action must be received by September 16, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396, before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On February 6, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a proposed site-specific revision to its TSP SIP for Villa Grove's "Dump and Boot Pit" emissions in Champaign County, Illinois. Villa Grove is located in Champaign County, which is classified as attainment with respect to the TSP National Ambient Air Quality Standards (NAAQS).

The state is proposing that Villa Grove's Dump and Boot Pit be allowed to delay compliance with the 90 percent control requirements of Illinois Rule 203(d)(8)(B), until September 1, 1987. Rule 203(d)(8)(B) requires that dump pit emissions shall be controlled by 90 percent at any new or modified facility with an annual throughput of more than 300,000 bushels but less than 2,000,000 bushels which is located outside a major population area.

Villa Grove is in the process of modifying its facility. Two small dump pits are to be replaced by a larger dump pit, and a rack dryer will be replaced by a column dryer. Rule 203(d)(8)(F) requires that modified grain handling operations comply with the reqirements of Rule 203(d)(8)(B).

Rule 203(d)(8)(B)(ii) would require Dump and Boot Pit emissions to be controlled by 90 percent to 0.76 tons per year, a 6.8 ton year reduction. If the proposed SIP revision is approved, this reduction will not immediately occur, and the Dump and Boot Pit emissions will remain 7.56 tons per year. However, some of the other emissions from the facility will be reduced due to the modifications. The Headhouse Receiving Leg emissions, for instance, will be subject to Rule 203(d)(8)(B)(iii) for Internal Transferring Area, which also requires 90 percent control. This will provide an enforceable emission reduction of 5.85 tons per year.

Because the delayed compliance will not cause an increase in actual emissions in Champaign County (in fact the modification will provide an enforceable emission reduction of 5.68 tons per year), and because the facility is in an attainment area, this temporary variance will not interfere with maintenance of the TSP NAAQS. Therefore, USEPA is proposing to approve the temporary variance as a SIP revision. USEPA notes, however, that this revision does not affect the issue of whether the Villa Grove facility is subject to USEPA's new source performance standard (NSPS) or new source review requirements.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401-7642.

Dated: July 15, 1985.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 85-19585 Filed 8-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 84-884; FCC 85-442]

Eligibility and Operations in the Telephone Maintenance Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making proposing amendments to the rule governing eligibility and operations in the Telephone Maintenance Radio Service (TMRS), one of the Commission's private land mobile radio services. This action is being taken as a result of evaluating comments from the public received in response to the October 1984, Notice of Inquiry in this proceeding. The Commission is proposing to amend the TMRS Rule (47 CFR § 90.81) to remove the division of frequencies between wireline carriers and microwave carriers on the VHF and UHF frequencies allocated to the TMRS. The Commission is also soliciting comments on a proposal to allow TMRS eligibles, in limited circumstances, to use their TMRS facilities to maintain customer premises equipment and enhanced service offerings as well as their communications common carrier facilities.

DATES: Comments are due October 15, 1985; reply comments are due November 15, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Harold Salters, Land Mobile & Microwave Div., Private Radio Bureau (202) 632-7597.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

In the matter of amendment of § 90.81 of the Commission's rules regarding the Telephone Maintenance Radio Service (PR Docket No. 84-884).

Notice of Proposed Rule Making

Adopted: August 5, 1985.

Released: August 16, 1985.

By the Commission.

Background

1. On September 13, 1984, the Commission adopted a *Notice of Inquiry* in this proceeding to solicit public comment on any proposed amendments to the Rule, 47 CFR 90.81, governing eligibility and operations in the Telephone Maintenance Radio Service.[1] The Commission was concerned that amendments may be required in light of the massive changes experienced by the telecommunications industry in the wake of the divestiture of the Bell Operating Companies (BOCs) by the American Telephone and Telegraph Company (AT&T). The Telephone Maintenance Radio Service was established in 1958,[2] at a time when the majority of communications common carrier facilities in the United States, both local exchange and interexchange (long distance), were owned by AT&T directly or its BOCs.

2. Today, eligibility in the Telephone Maintenance Radio Service is limited to communications common carriers offering wireline or wireline and radio communications service to the public for hire (hereafter referred to as the wireline carriers), and radio communications common carriers authorized in the Point-to-Point Microwave Radio Service under Part 21 of the Commission's Rules, 47 CFR 21.700 *et seq.*, (hereinafter referred to as the microwave carriers).

3. The wireline carriers have available for their exclusive use two low-band VHF frequencies, two high-band VHF frequencies and six frequency pairs at 450/470 MHz in the UHF band used for mobile relay operations. The microwave carriers (e.g., MCI, GTE, Sprint, Wold Communications, etc.) have available twelve frequency pairs in the UHF band which they must share with eligibles in the Power, Petroleum, Forest Products and Manufacturers Radio Services.[3] In the 470–512 MHz band (Subpart L of Part 90) and the 800 MHz band (Subparts M and S of Part 90) there is no division of frequencies between wireline carriers and microwave carriers, nor are there any frequencies allocated for the Telephone Maintenance Radio Service's exclusive use.

4. The *Notice of Inquiry* observed that the current division of frequencies effectively allocates exclusive frequencies for the use of the wireline carriers while it offers not exclusive frequencies to the microwave carriers who must share their frequencies with the Power, Petroleum, Forest Products and Manufacturers Radio Services.

5. Our *Inquiry* solicited comments on five broad issues facing the Telephone Maintenance Radio Service (TMRS) in the post-divestiture telecommunications environment:

—AT&T's status as an eligible in the Telephone Maintenance Radio Service.
—The division of frequencies between wireline and microwave carriers; the role of interservice frequency coordination; and the allocation of additional spectrum to the TMRS.
—The primary orientation of the TMRS as between maintaining local exchange service facilities or maintaining interexchange service facilities.
—The use of TMRS frequencies to maintain customer premises equipment and enhanced service offerings furnished by the separated subsidiaries of AT&T and the BOCs.
—The economic impact of changes in eligibility and operations in the TMRS on smaller independent telephone companies and rural telephone companies and cooperatives.

6. Comments and reply comments in response to the issues raised in the *Notice of Inquiry* in this proceeding were submitted by the following parties:

Comments

Central Committee on Telecommunications of the American Petroleum Institute (API)
American Telephone and Telegraph Company (AT&T)
Bell Operating Companies (BOCs) [4]
Continental Telecom, Inc. (Contel)
Forest Industries Telecommunications (FIT)
Illinois Telephone Association
Manufacturers Radio Frequency Advisory Committee (MRFAC)
National Telephone Cooperative Association & Organization for the Protection and Advancement of Small Telephone Companies (NTCA/OPASTCO filing jointly)
United States Telephone Association (USTA)
Utilities Telecommunications Council (UTC)

Reply Comments

American Telephone and Telegraph Company [5]
Bell Operating Companies
NTCA/OPASTCO
United States Telephone Association
Western Tele-Communications, Inc. (WTCI)
Western Union Telegraph Company

Discussion

A. AT&T's Status as an Eligible in the TMRS

7. Upon divestiture of its BOCs on January 1, 1984, pursuant to the Modified Final Judgment in *U.S.* v. *AT&T*,[6] AT&T was no longer a provider of local exchange telephone service. The provision of this local exchange service formed the basis of AT&T's eligibility for wireline carrier frequencies in the TMRS. The *Notice of Inquiry* noted that AT&T is an interexchange (long distance) carrier operating in competition with other interexchange carriers, like GTE Sprint and MCI, who themselves have eligibility in the TMRS on the microwave carrier frequencies based on their status as licensees in the Point-to-Point Microwave Radio Service under Part 21 of the Rules. The *Notice of Inquiry* asked whether AT&T should continue to be eligible in the TMRS under the wireline carrier classification and whether AT&T should be "grandfathered" to use the frequencies on which it currently operates.

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[1] *Notice of Inquiry* (FCC 84-423), released September 26, 1984, 49 FR 39062 (October 3, 1984).

[2] The Telephone Maintenance Radio Service is one of the 20 radio services which together constitute the Private Land Mobile Radio Services governed by Part 90 of the Commission's Rules (47 CFR 90.1 *et seq.*). Facilities in the Telephone Maintenance Radio Service are used for the transmission of communications related to the construction, repair, maintenance or operation of communications common carrier facilities. *See First Report and Order*, Docket 11991, 42 FCC 820, 831–2 (1958). *See also Report and Order*, Docket 19853, 50 FCC 2d 165 (1974), where eligibility in the TMRS was extended to microwave carriers licensed under Part 21 of the Rules.

[3] *See* 4 CFR 90.81(c), (d)(1) and (d)(4). The Power, Petroleum, Forest Products and Manufacturers Radio Services, together with the Telephone Maintenance Radio Service, constitute five of the ten radio services in the Industrial Radio Services. *See* 47 CFR 90.59–90.81.

[4] At times throughout this *Notice*, we label the frequencies exclusively allocated to the wireline carriers pursuant to § 90.81(d)(1) as the "limitation 1" frequencies, and the frequencies to which the microwave carriers have access pursuant to §90.81(d)(4) are labelled the "limitation 4" frequencies.

[5] For ease of reference, the following Telephone Companies which jointly submitted their comments and replies are called the "Bell Operating Companies": The Bell Telephone Company of Pennsylvania; the Chesapeake and Potomac Telephone Companies; The Diamond State Telephone Co.; Illinois Bell Telephone Co.; Indiana Bell Telephone Co., Inc.; Michigan Bell Telephone Co.; The Mountain States Telephone and Telegraph Co.; Nevada Bell; New England Telephone and Telegraph Co.; New Jersey Bell Telephone Co.; New York Telephone Co.; The Northwestern Bell Telephone Co.; The Ohio Bell Telephone Co.; Pacific Bell; Pacific Northwest Bell Telephone Co.; South Central Bell Telephone Co.; Southern Bell Telephone and Telegraph Co.; Southwestern Bell Telephone Co.; and Wisconsin Bell, Inc.

[5] Reply comments in this proceeding were due January 4, 1985. AT&T filed their reply comments on January 8, 1985, accompanied with a *Motion for Acceptance of Late Filed Reply Comments*. AT&T's *Motion* requested that the Commission accept these reply comments since they were the final set of pleadings to be filed in this *Notice of Inquiry* and thus no party would be prejudiced by the Commission's consideration of them. We agree, and hereby accept them.

[6] 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983)

8. AT&T is the largest single user of Telephone Maintenance Radio Service facilities. In its comments, AT&T observed that divestiture resulted in a 50% increase in plant and facilities over that which it previously held.[7] This increase resulted from the transfer to AT&T of the inter-LATA communications links owned by the BOCs.[8] While AT&T assumed responsibility for maintaining these additional facilities, only one TMRS base station (in a rural part of Washington State) and associated mobile units were transferred from the BOCs to AT&T. Thus AT&T states that its need for TMRS frequencies to maintain its facilities has increased significantly. Citing its embedded investment in the TMRS, and its post-divestiture investments in TMRS facilities,[9] AT&T proposes that if it were to be displaced from the "limitation 1" frequencies, that its currently authorized frequencies and facilities be grandfathered for the useful life of the equipment in order to allow it to recover its investment in embedded TMRS plant. AT&T contends failure to grandfather these faciities would force it to convert all its TMRS equipment utilizing "limitation 1" frequencies to operate on different frequencies or force the wholesale replacement of its equipment utilizing those frequencies.

9. Every party in this proceeding that chose to address the issue of AT&T's status as an eligible in the TMRS commented in support of AT&T's continued access to its present TMRS frequency assigments either through "grandfathering" or by the elimination of the fence between the wireline frequencies and the microwave frequencies. Organizations representing users of the Private Land Mobile Radio Services sharing frequencies with the TMRS (MRFAC, UTS, API) were concerned that any displacement of AT&T from the frequency assignments designated for wireline carrier use would produce severe congestion on the already shared "limitation 4" frequencies. Organizations representing local exchange carriers (Contel, USTA, NTC/OPASTCO) also supported AT&T's continued access to its existing frequency assignments regardless of whether these groups supported the continuation of the frequency fence between the wireline carriers and the microwave carriers.[10] All parties agreed that displacement of AT&T from the wireline frequencies would not only "strand" AT&T's embedded capital investment in TMRS facilities, but would also result in a predominance of TMRS users on one side of the frequency fence (the microwave, or interexchange, carrier side) while leaving a glut of frequency capacity on the other side (the wireline carrier side.)[11]

B. Division of Frequencies in the TMRS

10. The *Notice of Inquiry* requested comments on the following issues: whether all the VHF (30–50 MHz band and 150 MHz band) and UHF (450–470 MHz band) frequencies how allocated to the TMRS should be made available to both wireline and microwave carriers on an equal basis (i.e., removal of the frequency fence); the role of interservice frequency coordination on the twelve UHF frequency pairs that the TMRS shares with the Power, Petroleum, Forest Products and Manufacturers Radio Services; the allocation of additional spectrum to the TMRS; and the current problems existing between and among wireline and microwave carriers in the 470–512 MHz band and the 800 MHz band, where there is no division of frequencies or exclusive allocations for the TMRS.

11. The USTA, MRFAC, AT&T, UTC, API and WTCI supported dropping the frequency fence, claiming that this division of frequencies was arbitrary in today's increasingly complex telecommunications environment where the technologies employed by interexchange and local exchange carriers are often the same. USTA, the national trade association for local exchange telephone companies, urged the adoption of a "pragmatic" approach which emphasizes the purpose of the TMR—the use of radio for the efficient construction, repair maintenance and operation of common carrier facilities—rather than an "artificial" division of frequencies among carriers. USTA states:

> Many of our members (and their affiliates) currently have diverse interests in all aspects of telephone communications, including provision of interexchange services, customer premises equipment (CPE) and enhanced services. Such wireline carriers and their operations cannot be neatly assigned to either the wireline or the microwave category, as the Rule is currently constructed.[12]

12. Organizations representing users of the Private Land Mobile Radio Sercices sharing frequencies with the TMRS generally supported dropping the division of frequencies. MRFAC noted that with the growing overlap of wireline and interexchange common carrier service and technologies, there is no longer any practical reason to designate certain frequencies for the exclusive use of wireline carriers. API notes that removal of the frequency fence would likely equalize use of all TMRS frequencies. However, these organizations are concerned that removal of the frequency fence may lead to an increased number of applications for the shared TMRS frequencies with a concomitant increase in congestion on these frequencies. MRFAC and UTC propose to relieve additional frequency congestion on the shared frequencies by allowing microwave carriers to use the currently allocated wireline frequencies. MRFAC and UTC would designate the current wireline "limitation 1" frequencies as the primary frequencies for all common carriers and allow those carriers access to the 12 shared frequencies only when the "primary" frequencies in their geographic area are exhausted.

13. The BOC's, NTCA/OPASTCO, the Illinois Telephone Association and Contel support the retention of the frequency fence in order to preserve the access of local exchange carriers to the exclusive wireline frequencies. The BOCs claim that the maintenance and repair of local exchange facilities inherently requires greater use of TMRS facilities than the maintenance and repair of microwave stations. Citing the "limited number" of microwave towers in any given geographic area, and claiming that conventional

[7] The added plant and facilities acquired by AT&T as a result of divestiture represents a 69% increase in point-to-point microwave radio facilities, and a 30% increase in cable sheath miles. (AT&T *Comments*, p. 6.)

[8] Pursuant to the *Modified Final Judgment*, Local Access and Transport Area (LATA) boundaries were drawn to differentiate "exchange" and "interexchange" services for the purposes of the MFJ. The BOCs provide service within the LATAs (intra-LATA), and interexchange carriers, including AT&T, provide service between the LATAs (inter-LATA).

[9] AT&T embedded investment in TMRS facilities as of January 1, 1984 was approximately $8.6 million. Additionally, AT&T's expenditures for the construction of base stations and the purchase of mobile radio equipment for TMRS use during 1984 were approximately $3.0 million. (AT&T *Comments*, p. 7.)

[10] The BOCs would indirectly "grandfather" AT&T's use of "limitation 1" frequencies by designating one wireline frequency pair, presumably the one most used by AT&T, as the exclusive frequency pair for the use of the microwave carriers, including AT&T. *see* paragraph 13, *infra*.

[11] AT&T is licensed on all ten of the exclusive "limitation 1" frequencies and for the three of the "limitation 4" frequencies. The most heavily used is "limitation 1" frequency 451.325 MHz which accounts for 85% of base station, repeater and mobile TMRS frequencies authorized to AT&T. AT&T's maintenance personnel have at their disposal 465 TMRS base stations and repeaters, 1559 vehicular units, 354 portable units and 22 airborne units. (AT&T *Comments*, pp. 4–5).

[12] USTA *Comments*, p. 3.

communications systems, such as telephones, are often pre-installed at the site of the microwave tower, the BOCs claim microwave carriers are much less dependent upon TMRS facilities for internal communications than are wireline carriers. The BOCs recommend that we maintain the existing frequency fence but reallocate one of the UHF wireline frequency pairs to the microwave carriers for their exclusive use, allow microwave licensees of any wireline frequency three to five years to migrate to the designated exclusive microwave frequency pair,[13] and allow the same time frame for any existing wireline licensees to migrate away from that exclusive microwave frequency pair.

14. NTCA/OPASTCO would maintain the frequency fence, but change the distinction between the sides of the fence in order to more clearly reflect the new telecommunications environment. According to NTCA/OPASTCO, the more accurate distinction is between exchange carriers and interexchange carriers. They assert the term "microwave carrier" no longer has the meaning it once did, since many exchange carriers as well as many interexchange carriers employ microwave circuits, and many interexchange carriers use "wires" of one type or another (e.g., fiber optics) to carry traffic. NTCA/OPASTCO believes some sort of frequency fence in the TMRS is necessary to assure that interference between the maintenance and repair activities of local exchange and interexchange carriers is minimized. Recognizing that there may be instances where the requirements of one class exceed the number of frequencies available to it in a given geographic area, NTCA/OPASTCO would permit limited access to each other's pools within the existing standard.[14]

15. All commenters to this proceeding that addressed the issue of interservice frequency coordination of the 12 UHF frequency pairs the TMRS shares with the Power, Petroleum, Forest Products and Manufacturers Radio Services vigorously supported continued interservice frequency coordination.[15] The BOCs and NTCA/OPASTCO noted the likelihood of service deterioration due to increased harmful interference if interservice frequency coordination were absent. API commented on interservice frequency coordination, stating:

> This coordination approach has been successful in avoiding interference between users. Both Congress and the FCC have recently recognized the value of frequency coordination procedures for licensees in the Private Land Mobile Radio Services. [Footnote omitted.] These benefits should continue to be extended to assignments shared between TMRS operators and other Part 90 users. The Commission has recently adopted a Notice of Proposed Rule Making in the Docket No. 83-737 proceeding designed to examine frequency coordination issues. Interservice coordination procedures specified in that Notice of Proposed Rule Making may make these interservice coordination efforts even easier than they are today.[16]

16. Commenters generally agreed that the allocation of additional frequencies to the TMRS would alleviate certain congestion problems in that service. The USTA viewed implementation of the Commission's proposal in General Docket No. 84-1233 to allocate additional spectrum in the 900 MHz band to the Private Land Mobile Radio Services as a prerequisite to actual elimination of the frequency fence.[17] AT&T believes sufficient spectrum should be allocated to the TMRS commensurate with the service's importance in order to reduce frequency congestion in certain areas. NTCA/OPASTCO and the BOCs believe the Commission should study the issue of frequency allocations to the TMRS in more detail by "collecting concrete data." During this study period, these parties propose the Commission "freeze" current TMRS assignments and defer action on all pending AT&T applications for "limitation 1" frequencies until the issuance of an Order in this proceeding.[18]

17. None of the comments or reply comments discussed current problems existing between and among wireline and microwave carriers in the 470-512 MHz band the 800 MHz band—bands where there is no division of frequencies among carriers or even any exclusive frequency allocations for the TMRS.

C. Orientation of the TMRS: Local Exchange vs. Interexchange

18. The *Notice of Inquiry* observed that the TMRS was primarily established in 1958 to provide for the maintenance and operation of "basic transmission facilities." This led us to inquire whether TMRS facilities should be oriented toward the maintenance of local exchange service facilities (i.e., the local loop) or the maintenance of interexchange service facilities (long distance lines).

19. The USTA and API believe that the concept of "basic transmission facilities" ultimately includes both local exchange and long distance service, and that neither type of service should take precedence over the other. For USTA, any proposed modification of the TMRS Rule should aim to enhance the maintenance and operation of overall telecommunications services. NTCA/OPASTCO, the BOCs and the Illinois Telephone Association argue that the maintenance of local exchange facilities should have precedence over the maintenance of interexchange facilities. These parties submit, for reasons also discussed in paragraph 13, *supra*, that interexchange carriers have alarm and testing points on their circuits that are concentrated and enploy redundant circuitry to connect two or more points on their network, while local exchange carriers have long loop lengths and large service areas which make it expensive to install alarm and testing points. These differences make local exchange carriers more dependent on the TMRS,

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[13] Aside, of course, from AT&T, whom the BOCs label as a "microwave" carrier in the post-divestiture environment, the number of cases where traditional microwave carriers employ wireline frequencies is extremely small. The TMRS rule does not give microwave carriers the option of applying for "wireline" frequencies when all their "microwave" frequency pairs are assigned in their geographic area. Therefore, in only a limited number of instances, pursuant to the Part 90 waiver process, 47 CFR § 90.151, has the Commission permitted microwave carriers to employ wireline frequencies.

[14] NTCA/OPASTCO suggest permitting access to the other pool when all frequencies for which the applicant is primarily eligible are assigned within 35 miles of the proposed base station. *See* 47 CFR 90.81(d)(4).

[15] Interservice frequency coordination is the process by which the Commission assures that applications for facilities on frequencies that are shared between two or more private land mobile services do not cause interference to the operations of co-channel users within a certain geographic radius from the site of proposed operation. Thus, applicants for frequencies on any of the 12 UHF frequency pairs that are shared between these five services can request one of the shared frequency pairs only when all of the base and mobile frequencies for which the applicant is primarily eligible are assigned within 35 miles of the proposed base station. The frequency coordination committees for all five services must concur with the application, pursuant to 47 CFR § 90.81(d)(4).

The Commission-recognized organization responsible for frequency coordination activities in the TMRS is the Telephone Maintenance Frequency Advisory Committee (TELFAC). For background on the frequency coordination process in the private land mobile services, see *Notice of Proposed Rule Making*, PR Docket 83-737, 49 FR 45454 (November 16, 1984).

[16] API *Comments*, p. 9.

[17] General Docket No. 84-1233, *Amendment of Parts 2, 15 and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 806-902 MHz and 935-941 MHz Band for Private Land Mobile Use*, FCC 84-575, released January 3, 1985, 50 FR 1582 (January 11, 1985).

[18] BOC *Comments*, p. 8; NTCA/OPASTCO *Reply Comments*, pp. 6-7.

according to these parties. AT&T, in its *Reply Comments*, vigorously rebuts these arguments, emphasizing the similarities in TMRS requirements between local exchange carriers and interexchange carriers. AT&T points out that it is precisely the large number of alarm and testing points on its 26,000 sheath miles of buried cable, 1,230 miles of fiber optic cable, and 3,200 microwave stations, which requires the use of TMRS facilities to dispatch work crews when these alarms are activated.[19]

D. Using the TMRS to Maintain CPE and Enhanced Service Offerings

20. The *Notice of Inquiry* requested comment on the use of TMRS facilities to install, maintain and repair customer premises equipment (CPE) and equipment associated with enhanced service offerings. All parties who addressed this issue generally agreed that TMRS facilities should not be employed for communications related to installing and maintaining CPE or enhanced service offerings.[20] AT&T and the BOCs strongly emphasized that neither AT&T Information Systems (ATTIS—AT&T's separated subsidiary) or the separate subsidiaries of the BOCs who market and install CPE and enhanced services, should be permitted to use TMRS facilities for these activities. The BOCs, AT&T, and the organizations representing Private Land Mobile Radio Service users, would also prohibit communications common carriers on whom no separate subsidiary requirement is imposed, as well as any other entities, from using TMRS facilities for activities involving the installation and maintenance of CPE and enhanced services. API's statement below summarizes the position of the majority of commenters:

> These enhanced service and CPE providers should not be allowed access to the limited TMRS spectrum. To permit these companies, with massive growth potential, access to the frequency assignments available to the TMRS would be detrimental both to those who employ this spectrum for basic transmission service maintenance needs and those, such as Central Committee members, who share, on an interservice basis, UHF assignments, with TMRS licensees.[21]

21. USTA recommends that the TMRS Rule be amended to allow local exchange carriers and "facilities-owning" interexchange common carriers, and their subsidiaries, to be eligible in the TMRS for construction, repair, operation and maintenance of all their common carrier facilities.[22] USTA points out that carriers now eligible in the TMRS have chosen, or been required, to use various types of corporate structures for their operations for transmission facilities, CPE and enhanced service offerings.

Consequently, USTA argues that any distinction in the TMRS Rule based on corporate structure would be arbitrary, forcing those carriers using common equipment and personnel for different activities, solely due to TMRS eligibility requirements, to separate these operations or maintain duplicative radio facilities.

22. Thus, USTA would extend TMRS eligibility to a carrier's subsidiaries, but not to its affiliates, contending that a carrier should not be penalized simply because it uses a subsidiary for construction and maintenance activities. Affiliates, however, would not be eligible in the TMRS because the eligible carrier cannot control its other affiliates as it can control its own subsidiaries.[23]

E. Economic Impact on Small and Rural Telephone Companies

23. Pursuant to our responsibilities under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, the *Notice of Inquiry* solicited comments specifically on the economic impact of changes in TMRS eligibility and operations on smaller independent telephone companies and rural telephone companies and cooperatives.

24. NTCA/OPASTCO, national organizations representing small and rural exchange carriers, assert that removal of the frequency fence would have an adverse effect on the operations of small and rural exchange carriers. When filing their comments, NTCA/OPASTCO asserted that quantifiable dollar impacts were not available. They believe that removal of the frequency fence would increase the need for frequency coordination and also drive up its cost. To the extent that TMRS frequencies would not be available in a given geographic area, NTCA/OPASTCO asserts that the cost of maintaining rural telecommunications plant would rise. They do not show, however, that congestion on the TMRS frequencies is a problem in the largely rural areas served by their membership.

25. NTCA/OPASTCO expressed concern that any prohibition on using TMRS facilities to install and maintain CPE and enhanced services would severely affect small and rural telephone companies that use common equipment and personnel to maintain both their basic transmission facilities and CPE/enhanced facilities. NTCA/OPASTCO described the problem:

> . . . [T]he crew may start its day fixing a subscriber's drop wire, then move to replacing another subscriber's CPE, then test and repair some distribution facilities, and finally install and test out an enhanced service for a third subscriber. Permitting the crew to use its vehicle's radio only for some tasks and not for others would be an administrative nightmare for both the carrier and the crews, would cause the carrier to incur needless costs, and would waste time and money. For these reasons, carriers not subject to the separate subsidiary requirements for the provision of CPE and enhanced services should be allowed to use the TMRS frequencies for all operations.[24]

Proposal

26. The Commission is impressed by the quality of the comments and reply comments submitted in response to the *Notice of Inquiry*. All parties recognized the complexity of the post-divestiture telecommunications environment, and the Commission's special public interest responsibility to inquire into modifying the TMRS Rule to make it consistent with the new structure of the industry.

27. After careful review of the comments and replies, we are proposing to remove the frequency fence and make all TMRS frequencies available to both local exchange and interexchange carriers on an equal basis. The twelve UHF frequency pairs that are shared with the Power, Petroleum, Forest Products and Manufacturers Radio Services would continue to be subject to interservice sharing and interservice frequency coordination under our proposal. We are not proposing to permit the use of TMRS facilities for the installation and maintenance of CPE or enhanced service offerings except where these activities are undertaken by a TMRS eligible using common equipment for the maintenance of both its basic

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[19] AT&T *Reply Comments*, pp. 5–9.

[20] NTCA/OPASTCO's position is that the use of TMRS frequencies for the provision of CPE and enhanced services should be limited to local exchange carriers with no separate subsidiary requirement. As their comments apply to the operations of small and rural exchange carriers, they are discussed at Section E.

[21] API *Comments*, p. 14.

[22] By restricting eligibility to "facilities-owning" interexchange common carriers, USTA's proposal would prevent those entities engaged in pure resale of communications common carrier capacity from holding TMRS authorizations.

[23] Under USTA's proposal, ATTIS would still be barred from TMRS eligibility. ATTIS is a subsidiary of parent AT&T. AT&T Communications (ATTCom), the existing TMRS eligible owning transmission facilities, is also a subsidiary of parent AT&T. Because ATTIS is an affiliate, but not a subsidiary, of ATTCom, ATTIS could not hold a TMRS authorization because it is not under the control of ATTCom.

[24] NTCA/OPASTCO *Comments*, pp. 12–13.

transmission facilities and its CPE/enhanced offerings.[25]

28. The comments demonstrate to us that the existing division of frequencies in the TMRS between "wireline" carriers and "mircowave" carriers makes little sense in today's telecommunications environment where all communications common carriers use various transmission media to carry their traffic. The comments also demonstrate to us on two counts that the requirements of local exchange carriers and interexchange carriers for facilities in the TMRS are comparable. First, the comments do not convince us that the requirements of any single class of carrier should have precedence in the TMRS. We believe the underlying purpose of the TMRS, promulgated in 1958, still applies: facilities in this service are used to allow communications common carriers to increase the efficiency with which they can construct, maintain, repair and operate their basic transmission facilities, with the benefits of this greater efficiency accruing to the public. We also believe that basic transmission facilities subsume both local exchange service and interexchange (long distance) service. Second, the post-divestiture telecommunications environment has altered the traditional distinctions between what constitutes, and who provides, local exchange service and interexchange service. Today, many local exchange carriers provide interexchange service. Consequently, the BOCs have both local exchange and intra-LATA interexchange responsibilities.[26]

29. We propose to remove the frequency fence in keeping with our policy that the sharing of channels among like users tends to increase spectrum utilization.[27] We are mindful of the concerns of those commenters, such as NTCA/OPASTCO and the BOCs, that in the absence of a frequency fence, problems of harmful interference between the TMRS operations of local exchange carriers and interexchange carriers can be expected. However, two points persuade us that we can propose removing the frequency fence without engendering harmful interference on shared channels. First, we note the lack of any comments from any party to the effect that they have experienced interference to their TMRS operations in the 470–512 MHz band [28] and the 800 MHz band—bands where there is no division of frequencies based on the class of carrier. Second, we are confident that the existing frequency coordination mechanism can resolve any potential interference in the TMRS. The USTA made the point well:

> Dissolution of the fence, rather than imposition of reassignments for all (or many) carriers, will better promote long term coordination in the service. Adoption of a mandatory reassignment proposal would require the dislocation of many companies from those TMRS frequencies which they use currently, with concomitant expenditures of resources.
>
> USTA's proposal to eliminate the fence would not mandate any dislocations. AT&T could continue to operate on its licensed frequencies. The local exchange companies could similarly continue to use those frequencies they currently use. Coordination issues which arise would be resolved by TELFAC [29] under the same standards which TELFAC has applied since its inception. The coordination entity, in keeping with its charter, would continue to promote efficiency and limit potential interference as it conducts its coordination activities.[30]

30. We also believe that resolution of two pending proposals involving the allocation of spectrum to the private land mobile radio services may well alleviate, to some extent, the frequency congestion problems in the major metropolitan areas alluded to by many of the commenters. In General Docket No. 84–1233 (*see* note 17, *supra*), we proposed releasing 12 MHz of spectrum from the 900 MHz land mobile reserve for private land mobile use; 20% of this spectrum is proposed to be apportioned to the Industrial/Land Transportation pool, of which the TMRS is a constituent. In General Docket No. 85–172, we proposed expanding the sharing between the private land mobile services and the UHF–TV broadcast service.[31] This proposal would result in one to three additional UHF–TV channel pairs (12–36 MHz of spectrum) being made available for land mobile sharing in eight large urban areas.

31. We fundamentally agree with the majority of the commenters that TMRS facilities should not be used for the installation and maintenance of CPE and enhanced service offerings. Expanding TMRS eligibility to the growing numbers of terminal equipment providers could present the TMRS with severe frequency congestion problems in the larger urban areas. CPE and enhanced service offerings are not common carrier functions today. Hence, the use of TMRS frequencies for their installation and maintenance is not an appropriate use of TMRS facilities. Facilities in the Business Radio Service and the Specialized Mobile Radio Service are available to meet the internal communications requirements of CPE/enhanced service providers.

32. However, we are very concerned that those exchange carriers who have CPE and enhanced service functions and who employ common equipment and personnel in the maintenance of both their basic transmission facilities and their CPE/enhanced service offerings should not have to incur needless costs in duplicating radio facilities merely to meet the requirements of the TMRS eligibility rule. The points made by NTCA/OPASTCO and USTA in this regard are well-taken. Therefore, we propose to apply the principles enunciated in our Report and Order in the *Permissible Communications* proceeding [32] to permit the use of TMRS

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[25] In the proceeding in CC Docket 83–115 *et al.*, Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies (*Report and Order* (BOC Separation Order, 95 FCC 2d 1117 (1984), *Memorandum Opinion and Order on Reconsideration* (BOC Separation Order Reconsideration), 49 FR 28056 (June 28, 1984), *appeal dismissed sub nom. Illinois Bell Telephone Co.* v. *FCC*, 740 F.2d 465 (7th Cir. 1984)), we determined that each of the seven divested Regional Holding Companies (RHCs) must form a separate subsidiary if it wants to sell or lease CPE. The rule proposed here would not permit any RHC or its separated CPE subsidiary to secure an authorization in the TMRS because only the operating companies owned by the RHCs (*see* fn. 4, *supra*) are the eligible communications common carriers. Under this proposal, individual operating companies would only be able to use TMRS facilities to maintain CPE/enhanced services to the extent that they, (1) had responsibilities pursuant to state Public Service Commission requirements to install and maintain CPE or enhanced service offerings, and (2) used the same vehicles to maintain CPE/enhanced services that they use to maintain their basic transmission facilities as a communications common carrier.

[26] NTCA/OPASTCO *Comments*, p. 11, note 5.

[27] *See Report and Order*, PR Docket No. 84–370, *Amendment of Part 90 of the Commission's Rules concerning the sharing of two Police Radio Service frequency pairs with eligibles in the Fire and Special Emergency Radio Services*, FCC 84–619, released December 13, 1984, 49 FR 49637 (December 21, 1984).

[28] The 470–512 MHz band is allocated to the Private Land Mobile Radio Services only in the nation's larger metropolitan areas. Thus we are particularly impressed by the absence of interference reports in the TMRS in this band. We ascribe this to the coordination efforts of TELFAC, the recognized frequency coordinator for the TMRS, and the efforts of the other private land mobile frequency coordination committees performing their interservice sharing function.

[29] The Telephone Maintenance Frequency Advisory Committee (TELFAC) is the Commission-recognized organization responsible for frequency coordination activities in the TMRS.

[30] USTA *Reply Comments*, p. 5.

[31] *Further Sharing of the UHF Television Band by Private Land Mobile Radio Services*, Notice of Proposed Rulemaking, FCC 85–289, released June 10, 1985, 50 FR 25587, (June 20, 1985).

[32] PR Docket 84–109, *Amendment of Part 90 of the Commission's Rules and Regulations to eliminate*

Continued

facilities to maintain CPE and enhanced service offerings when the existing TMRS eligible uses common equipment to maintain both its basic transmission facilities and CPE/enhanced offerings.[33] Comments on this proposal are specifically solicited. While we do not believe this requires any specific changes to the TMRS Rule, commenters are encouraged to submit specific language if they think rule amendments are required to implement this approach.

33. In the *Permissible Communications* proceeding, we limited the relaxation of permissible communications rules to operations on exclusive channel assignments in the private land mobile services. However, we also removed restrictions on *all* frequencies used by the Special Industrial Radio Service and the TMRS that precluded the transmission of administrative and sales-related information, because these restrictions would require the duplication of radio facilities.[34] Paragraph (a)(2) of the permissible communications rule, 47 CFR 90.405(a)(2), which was not changed by the Report and Order, permits "[c]ommunications directly related and necessary to those activities which make the licensee eligible for the station license held under this part." It is our opinion that the use of TMRS facilities to maintain CPE and enhanced services by a TMRS eligible employing common equipment to perform its maintenance functions, should be construed as an activity directly related and necessary to those activities which make the licensee eligible.

34. Western Union's *Reply Comments* emphasized their historical eligibility in the TMRS as a user of the exclusive "wire-line" frequencies. We recognize that when the TMRS was established in 1958, the term "wire-line or wire-line and radio communications service" literally meant a common carrier service that employed wire cable as part of its transmission facilities.[35] As a result of this, the Western Union Telegraph Company was granted station licenses in the TMRS during the early 1960's utilizing the two exclusive high-band VHF frequencies (151.985 MHz base and 158.340 MHz mobile) allocated to "wire-line" carriers. Today, Western Union's plant for the rendition of its common carrier services includes, along with extensive radio facilities, approximately 10,000 miles of "wire-line" (copper wire) facilities. They now operate 130 TMRS stations, the majority of which utilize those two VHF frequencies.[36]

35. Since 1958, the term "wireline carrier" has come to mean the provision of landline local exchange telephone service.[37] The BOCs urge the Commission to adopt a Part 90 definition of wireline carrier that conforms to the Part 22 definition. We agree that any Part 90 definition of a wireline common carrier ought to conform to the Part 22 definition. However, we do not believe the public interest would be served by undermining the basis of Western Union's eligibility in the TMRS. Therefore, we propose to use the formal Part 22 definition of a wireline common carrier in the TMRS Rule and add wire-telegraph carriers as an eligibility category in the TMRS. We believe we must include the phrase "provision of landline local exchange telephone service" in the TMRS Rule in order to differentiate eligibility with respect to radio common carriers, who are specifically excluded from the eligibility provision.[38] We solicit comments from the public on this proposal and invite suggestions as to language in a TMRS eligibility rule that preserves the basis of TMRS eligibility while recognizing Western Union's, and any other wire-telegraph carrier's, traditional eligibility in the TMRS.[39]

Administrative

36. Notice is hereby given that it is proposed to amend 47 CFR Part 90 in accordance with the proposal set forth in the attached appendix.

Initial Regulatory Flexibility Analysis

37. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. *Reasons for Action:* The Commission is proposing these actions in order to make changes to the rule governing the Telephone Maintenance Radio Service so that it conforms to the structure of the telecommunications industry in the aftermath of the divestiture of the BOC's by AT&T, pursuant to the Modified Final Judgment in *U.S.* v. *AT&T.*

II. *Objective:* The objective of this proposal is to conform the rule governing the TMRS to the current structure of the telecommunications industry while enhancing the utilization of the existing TMRS frequency allocation.

III. *Legal Basis:* This proposal is authorized pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, which authorizes the Commission to make such rules and regulations as may be necessary.

IV. *Description, Potential Impact and Number of Small Entities Affected:* The *Notice of Inquiry* in this proceeding specifically requested comments on the economic impact changes in the TMRS Rule might have on smaller Independent telephone companies and rural telephone companies and cooperatives. NTCA/OPASTCO, national organizations representing small and rural exchange carriers, expressed concern that removal of the frequency fence could increase the need for frequency coordination, drive up its cost, and, to the extent that TMRS frequencies would not be available in a given area, increase costs of maintaining rural telecommunications plant. The number of carriers affected and quantification of the potential impact were not available. NTCA/OPASTCO also expressed concern that any prohibition on using TMRS facilities to

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the permissible communications restrictions in the Private Land Mobile Radio Services, FCC 85-27, released January 31, 1985, 50 FR 6179 (February 14, 1985).

[33] The draft revision to the TMRS eligibility rule submitted by USTA in its *Comments* would permit a carrier that employs common equipment to maintain both its CPE and basic transmission facilities to use its TMRS facilities for both functions. However, the USTA revision, with its emphasis on subsidiaries and the relationship between subsidiaries and affiliates of a parent corporation, would unnecessarily embroil the Commission in precisely defining terms and result in the expenditure of Commission resources to interpret the application of the rule to various corporate structures. We believe our proposed application of the *Permissible Communications* precepts to this issue allows us to reach the same result more efficiently.

[34] *Permissible Communications, supra*, para. 7-8.

[35] *See* the original rules governing the TMRS, Part 11, Subpart P, §§ 11.751-11.754, set out in Appendix K to the *First Report and Order*, Docket 11991, 42 FCC 820, 868-9 (1958).

[36] Western Union *Reply Comments*, p. 1.

[37] Part 22 of the Commission's Rules, which governs the Public Mobile Services, defines a wireline common carrier as a common carrier which is in the business of providing landline local exchange telephone service. *See Revision and Update of Part 22 of the Public Mobile Radio Services Rules*, CC Docket No. 80-57, 95 FCC 2d 769, 772-3 (1983).

[38] The *First Report and Order* in Docket 11991 promulgating the TMRS stated: "With respect to those communications common carriers whose service is entirely by wireless facilities, it is believed that their needs can and should be accommodated in the Business [Radio] Service, and they are being excluded from the [TMRS] eligibility provision." 42 FCC 832 (1958).

Part 22 defines a radio common carrier as "a common carrier engaged in the provision of public mobile service, which is not also in the business of providing landline local exchange telephone service." 47 CFR § 22.2.

[39] In the recent Memorandum Opinion and Order in *Cellular Communications Systems*, CC Docket No. 79-318, (FCC 84-416, released October 19, 1984), the Commission reaffirmed its earlier ruling that, for purposes of Part 22, a "wireline" carrier is one that provides local exchange telephone service. Petitioners had challenged Western Union's eligibility for the nonwireline cellular frequency blocks on the basis, among other things, that Western Union held TMRS licenses on the wireline carrier frequencies. The Commission agreed with Western Union that even though it held "wireline" frequencies in the TMRS, for Part 22 purposes Western Union is a nonwireline entity because it does not own local exchange facilities nor provide local exchange telephone service. (*MO&O*, paras. 14-15.)

install and maintain CPE/enhanced services would impact those of their members who use common equipment and personnel to maintain both their basic transmission facilities and CPE/enhanced facilities.

V. *Reporting, Recordkeeping, and Other Compliance Requirements:* The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to contain no new or modified form, information collection and/or recordkeeping, labelling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public. Additionally, no new compliance requirements are being proposed.

VI. *Federal Rules Which Overlap, Duplicate or Conflict With This Rule:* None.

VII. *Significant Alternatives:* Significant alternatives to our proposal to permit entities employing TMRS facilities to maintain both their CPE/enhanced and basic transmission facilities were contemplated and dismissed because of their severe adverse impact on these small entities. In regard to our proposal to remove the frequency fence, we considered, and declined, to retain the frequency fence. For reasons discussed at para. 24, *supra*, we believe that spectrum congestion is not a problem in the largely rural areas served by these entities. We also expect that TMRS frequencies will still be available in these areas, with or without the frequency fence, and hence, the costs of maintaining rural telecommunications plant would not increase.

Procedural Matters

38. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding, must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

39. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communication Act of 1934, as amended, 47 U.S.C. 154(i), 303(r). Pursuant to the procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments on or before October 15, 1985, and reply comments on or before November 15, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments provided that such information or a writing indicating the nature and source of such information is placed in the public files and provided that the fact of the Commissioner's reliance on such information is noted in the Report and Order.

40. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

41. It is ordered that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration, and that the Secretary shall also cause a copy of this Notice to be published in the **Federal Register**

42. Point of contact on this matter is Harold Salters, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632-7597.

Federal Communication Commission.

William J. Tricarico,

Secretary.

Appendix

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Subpart D—Industrial Radio Services

1. The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 90.81 is amended by revising (a) and (d)(4) and by removing (d)(1) to read as follows, and all references to limitation 1 are removed from the Table at paragraph (c).

§ 90.81 Telephone Maintenance Radio Service.

(a) *Eligibility.* Communications common carriers engaged in the provision of landline local exchange telephone service, or interexchange communications service, or who provide wire-telegraph service, and radio communications common carriers authorized in the Point-to-Point Microwave Radio Service under Part 21 of this chapter are eligible to hold authorizations in the Telephone Maintenance Radio Service.

* * * * *

(d) * * *

(1) [Reserved]

* * * * *

(4) This frequency is available on a shared basis in the Power, Petroleum, Forest Products, Manufacturers, and Telephone Maintenance Radio Services. Except for assignments made to eligibles authorized in the Telephone Maintenance Radio Service, it may be assigned only when all of the base and mobile frequencies in the 450–470 MHz band for which the applicant is primarily eligible are assigned within 35 miles (56 km) of the proposed base station. Applications for this frequency must be coordinated with all five services.

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[FR Doc. 85-19378 Filed 8-15-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 50834-5034]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 9 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The measures contained in this amendment will reduce bycatches of species fully utilized by United States fishermen by closing the area within 20 miles of the Aleutian Islands to foreign trawling; provide NMFS with more timely catch information necessary for adequate inseason management; implement the NMFS habitat conservation policy; and introduce a definition of directed fishing. Each measure is intended to respond to biological, ecological, or socioeconomic problems that have been identified by the fishing industry and the management agencies. Implementation of these measures is necessary for conservation and management of the groundfish resources and for the orderly conduct of the fishery.

DATES: Written comments must be received on or before September 30, 1985.

ADDRESSES: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. Copies of the amendment, the environmental assessment, and the regulatory impact review/initial regulatory flexibility analysis may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501, 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, (Resource Management Specialist, NMFS) 907-586-7230.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fishery in the exclusive economic zone (EEZ) in the Bering Sea and Aleutian Islands area is managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented January 1, 1982 (46 FR 63295, December 31, 1981).

Prior to 1984, the Council would receive proposals to amend the FMP during any of its scheduled meetings. At its April 1984 meeting, the Council adopted a policy whereby proposals for amendments would be received only once a year. Proposals contained in Amendment 9 were requested by the Council in September 1984 with a deadline set at December 7, 1984. After receiving proposals, the Council instructed its Plan Team to review and rank each proposal. At its February 1985 meeting, the Council reviewed the recommendations of the Plan Team, the Scientific and Statistical Committee, and the Advisory Panel, and selected five proposals for inclusion in Amendment 9. Other proposals were identified for development and consideration for inclusion in a future amendment. The Council directed its Plan Team to analyze the biological, ecological, and socioeconomic impacts of each of the five proposals and alternatives to each, as required by the National Environmental Policy Act of 1969 and other applicable law. The Plan Team then prepared drafts of an environmental assessment and a regulatory impact review/initial regulatory flexibility analysis (RIF/IRFA). The Council reviewed these documents at its March 26-29, 1985 meeting and then released them for public review, inviting comments from the interested public, fishing associations, and government agencies until May 3, 1985. In response to comments received, the Plan Team revised the draft analyses for consideration by the Council at its May 21-24, 1985 meeting. At that meeting, the Council reviewed the analyses, heard further public comment, and voted to recommend that the Secretary implement its preferred alternatives for three parts of Amendment 9.

A description of and reasons for each part of Amendment 9 follow:

1. Foreign trawling is prohibited within 20 miles of the Aleutian Islands in Area IV.

The rapid expansion of U.S. fishing operations in the Bering Sea and Aleutian Islands has led to greatly increased utilization of groundfish species, including full utilization of Pacific ocean perch, sablefish, and Atka mackerel. Despite reduction of foreign directed fishing effort in the area through reduced allocations, incidental catches of these fully utilized species continue to be taken, and it is unlikely that such incidental catches could be eliminated through modification of fishing practices. A substantial portion of the foreign catches of fully utilized species has been taken in a narrow zone roughly 20 miles to the north and south of that portion of the Aleutian Islands west of 170° W. longitude in Area IV (see figure 2 of § 611.9).

The proposed elimination of foreign trawling within this 20-mile zone would greatly reduce the incidental catch within that zone of species fully utilized by the U.S. fishing industry. Additional benefits would accrue to the U.S. fishing fleet, including (1) elimination of the potential for gear conflicts with, or grounds preemption by, foreign trawl fleets, and (2) increases in catch rates and operating efficiency resulting from groundfish stocks remaining unfished by foreign trawlers.

The RIR/IRFA concluded that fishery resources are readily available outside the closure zone and that the impact of the closure on the ability of foreign nations to harvest their groundfish allocations would be insignificant. The only two target species which may not be entirely available for harvest by foreign fleets outside of the proposed closed area are turbot and the "other rockfish" complex. Under the worst-case situation, 8 percent of the total allowable level of foreign fishing (TALFF) for turbot and 33 percent of the TALFF for the "other rockfish" complex could go unharvested. The major impact on the foreign fleet would be the displacement of trawl vessels, which has to a large extent already occurred under voluntary measures adopted in 1984.

The U.S. Fleet would directly benefit from the elimination of foreign incidental catches within the 20-mile closure zone, which in 1983 represented a potential U.S. harvest estimated at $0.5 million dollars, or a total discounted value over a 5-year period of $2.7 million. In 1984, however, reduced foreign incidental catches, reduced this discounted value to less than $706 thousand for the whole of Area IV.

Two other benefits to the U.S. industry, addressed although not quantified by the RIR/IRFA, are (1) an increase in operating efficiency of U.S. vessels and (2) encouragement of further expansion of domestic fishery efforts in the area. Excluding foreign effort would increase fishing time and operating efficiency of U.S. vessels by decreasing competition and possible gear conflicts. Fish not harvested by foreign trawling operations would remain concentrated, decreasing the amount of unproductive fishing time by U.S. vessels.

2. A reporting system for catch held aboard for 14 days or more is established.

A reporting system is established whereby applicants are required to indicate on their application for a Federal groundfish permit whether their vessels are to be used for (1) harvesting/processing, (2) mothership processing, (3) harvesting only, or (4) support only. If vessel usage fits (1) or (2), vessel operators will be required to check in and out of regulatory areas or districts. Such harvesting/processing vessels and motherships that catch and hold, or receive and hold, groundfish for periods of 14 days or more will be required to submit a weekly catch report to the Regional Director. Vessels that freeze or dry-salt their catches are considered to be in these categories. This requirement is directed at those vessels that are expected to remain at sea for periods of time sufficiently long that catch estimates are needed by fishery managers for inseason management decisions.

The objective of this proposal is to ensure that fishery managers receive timely estimates of catch by all domestic vessels so that fishery closure notices can be promptly issued when optimum yields (OYs) are reached. With the rapid recent growth of the domestic fishing fleet, increasing importance is placed on timely reporting of domestic harvests in order to ensure that OYs are not exceeded. Vessels which deliver their catch to shore-based processors land their catch frequently enough to allow timely estimation of total catch under existing regulations. However, vessels which freeze, salt, or otherwise preserve their catch aboard frequently remain at sea for extended periods; these are not currently required to report their catch until the time of landing.

Some 25 catcher/processor vessels could be operating in the Bering Sea and Aleutian Islands Area in 1985. Based on past catcher/processor landing records, the combined hold capacity of these vessels is approximately 13,000 metric tons (mt). Because OYs for some fishing areas are significantly smaller than this, these vessels are capable of harvesting entire OYs or significant portions of them on a single trip. Existing fishing regulations do not require reports of the catch aboard these vessels until landing. In addition, these vessels are not required to notify fishery managers when they begin fishing operations. Since domestic groundfish fishing vessels are not marked for identification by enforcement overflights, the number of catcher/processor vessels actually fishing in a given management area is not known until they land. Without knowledge of effort levels, fishery managers are not able to make projections of catch aboard.

Delayed catch reporting by domestic mothership operations poses similar problems for managers. In these operations, catcher vessels without processing capability deliver their catch, usually by cod-end transfers, to a mothership which processes it. Current regulations at § 675.5 require an Alaska Department of Fish and Game (ADF&G) fish ticket to be filled out each time a catcher vessel lands fish or delivers them to a mothership at sea and also require these fish tickets to be forwarded to ADF&G within 7 days of the date the fish were delivered. To date, domestic mothership operations have all occurred in sheltered waters with at least periodic access to U.S. mail service, so compliance with this requirement has been feasible. However, these mothership operations are expected to occur with greater frequency in the EEZ, where no method of filing the fish tickets with ADF&G within the 7-day period required by law is available.

With such large processing capacities and increasing numbers of catcher/processor and mothership vessels, the risks of overharvesting groundfish resources under the current reporting system are high. Because of the delays involved in reporting catches under current regulations, groundfish resources could be significantly overharvested before fishery managers discover that OYs have been exceeded. Since many of the groundfish species concerned are slow growing and long-lived, overharvesting can have considerable impacts on future production.

The Council considered the importance to NMFS of receiving timely catch information on which to make its inseason management decisions and the importance to the fishing industry of obtaining reasonably accurate projections of upcoming fishery closures. The Council then adopted a three-part proposal for the collection of additional information from catcher/processors and motherships. The first part requires the operators of catcher/processors and moterhships to so indicate on their applications for Federal fishing permits, showing their capability and intent to preserve their catch at sea. The second part requires them to notify the Regional Director of the date, hour, and position, 24 hours before starting and upon stopping fishing in a fishing area. This requirement enables NMFS and/or the Coast Guard to check compliance with fishery openings and closures and weekly catch report requirements, and to verify fishing effort by area. The third part requires each operator of a catcher/processor or mothership to provide the Regional Director a weekly written report of the amounts of groundfish caught or received by species or species group in metric tons by area when holding groundfish at sea for more than 14 days after catching or receiving them.

A definition of "directed fishing" is also proposed. The purpose of this difinition is to establish a rebuttable presumption that when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest that results from any fishing over any period of time, such fishing was directed fishing for such fish during that period.

In addition, NMFS has proposed some minor changes in the information required from applicants for a Federal permit to fish for groundfish in the Bering Sea and Aleutian Islands area, which will allow enforcement officials to better identify groundfish fishing vessels at sea and improve NMFS' enforcement of the groundfish fishery regulations.

These requirements will allow NMFS to make informed and well-reasoned inseason management decisions to adjust fishing areas and seasons and to apportion surplus groundfish among the user groups. This is a conservation measure that is intended to control the harvest by species or species group and prevent overfishing, thereby conveying a long-term benefit to the U.S. fishing industry.

3. The NMFS habitat conservation policy is implemented.

This part of Amendment 9 modifies and adds sections to the FMP to address the habitat requirements of individual species in the Bering Sea and Aleutian Islands Area groundfish fishery. The amendment describes the diverse types of habitat within the area, delineates the life stages of the groundfish species, identifies potential sources of habitat degradation and the potential risk to the groundfish fishery, and describes existing programs applicable to the area that are designed to protect, maintain, or restore the habitat of living marine resources. The amendment responds to NMFS' Habitat Conservation Policy (48 FR 53142, November 25, 1983), which advocates consideration of habitat concerns in developing or amending FMPs and strengthening NMFS' partnerships with States and the Councils on habitat issues.

The habitat policy is not implemented by a codified regulation. It serves as a

framework within which to develop regulations specific to habitat conservation objectives. One such regulation was adopted by the Council and is proposed along with regulations implementing the other two parts of Amendment 9. It requires vessel operators to retrieve their own fishing gear and to make a reasonable attempt to retrieve any abandoned or discarded fishing gear that they may encounter.

Classification

This proposed rule is published under section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97-453, which requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data and comments received during the comment period.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address above.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR/IRFA prepared by the Council. A copy of the RIR/IRFA may be obtained from the Council at the address listed above.

This rule, if approved, will have a significant beneficial economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. This determination is also based on the RIR/IRFA. A summary of the RIR/IRFA follows:

Prohibiting foreign trawling within 20 miles of the Aleutian Islands will convey a potential benefit to the U.S. fishing industry over five years of $2.7 million (discounted value using a 5% real interest rate). The potential for gear conflicts and ground preemptions between foreign and U.S. trawl gear will be avoided. The prohibition will not prevent foreign trawl fleets from harvesting their allocations of pollock, yellowfin sole, and "other flatfish".

The catcher/processor and mothership reporting requirements will convey an annual benefit to the U.S. industry in terms of conservation of groundfish stocks off Alaska. This benefit is estimated to be $2.3 million, which is the value of groundfish that otherwise might be lost due to overfishing if timely catch reports are not available.

Incorporation of the NMFS habitat policy into the FMP will highlight the Council's concerns, not only for the fishery resources under management, but also for the marine environment and the qualify of the habitat in which these resources live. The policy would also give the Council authority to consider and recommend implementation of regulations designed to protect the integrity of the marine habitat.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: August 13, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Parts 611 and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. In § 611.93, paragraphs (c)(2)(i) and (c)(2)(ii)(D) are removed; paragraph (c)(2)(ii) is redesignated as paragraph (c)(2); paragraphs (c)(2)(ii)(A), (ii)(B), (ii)(C), and (ii)(E) are redesignated as paragraphs (c)(2)(i), (ii), (iii), and (v) respectively; within new paragraph (c)(2)(v), subparagraphs (*1*) (*i*) and (*ii*) and (*2*) (*i*), (*ii*), and (*iii*) are redesignated as subparagraphs (A) (*1*) and (*2*) and (B) (*1*), (*2*), and (*3*) respectively; and a new paragraph (c)(2)(iv) is added, to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(c) * * *

(2) *Trawling.* * * *

(iv) At all times within the FCZ in the area bounded by straight lines connecting the following coordinates in the order listed:

53°30' N—170°00' W
53°30' N—172°00' W
53°00' N—172°00' W
53°00' N—176°00' W
52°30' N—176°00' W
52°30' N—177°00' E
53°00' N—177°00' E
53°00' N—175°00' E
53°30' N—175°00' E
53°30' N—170°00' E
52°00' N—168°26' E
52°00' N—175°00' E
51°00' N—175°00' E
51°00' N—180°
50°30' N—180°
50°30' N—178°30' W
47°55' N—178°30' W
48°45' N—172°00' W
52°00' N—172°00' W
52°00' N—170°00' W
53°30' N—170°00' W

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIANS ISLANDS AREA

3. The authority citation for Part 675 continues to read as follows:

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

4. In the table of contents, a new section is added in proper order to read as follows:

Sec.
675.25 Disposal of fishing gear and other articles.

5. In § 675.2, the following definition is added in proper alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Directed fishing, with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of any significant quantity of such fish. It will be a rebuttable presumption that, when any species, stock or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest that results from any fishing over any period of time,

such fishing was directed fishing for such fish during that period.

* * * * *

6. In § 675.4, paragraphs (b) and (d), are revised to read as follows:

§ 675.4 Permits.

* * * * *

(b) *Application.* The vessel permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a written application containing the following information:

(1) The vessel owner's name, mailing address, and telephone number;

(2) The name of the vessel;

(3) The vessel's U.S. Coast Guard documentation number or State registration number;

(4) The home port of the vessel;

(5) The type of fishing gear to be used;

(6) The length and net tonnage of the vessel;

(7) The hull color of the vessel;

(8) The names of all operators and/or lessees of the vessel;

(9) Whether the purpose of the vessel is harvesting/processing, mothership/processing, harvesting only, or support only; and

(10) The signature of the applicant.

* * * * *

(d) *Notification of change.* (1) Except as provided in paragraph (d)(2) of this section, any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(2) A permit issued under this section will authorize either harvesting or support operations, but not both. The notification to the Regional Director under paragraph (d)(1) of this section of a change in the type of operations in which that vessel is to engage must be completed before that vessel begins the new type of operation.

* * * * *

7. In § 675.5, a new paragraph (a)(3) is added to read as follows:

§ 675.5 Reporting requirements.

(a) * * *

(3) *Catcher/Processor and Mothership/Processor Vessels.* The operator of any fishing vessel regulated under this part who retains any part of its catch of groundfish on board that vessel for a period of more than 14 days from the time it is caught or who receives groundfish at sea from a fishing vessel regulated under this part must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Twenty-four hours before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the area of such activity. No such operator may retain any part of that vessel's catch or cargo of fish on board that vessel for a period of more than 14 days from the time it was caught or received unless the Regional Director was notified as required under paragraph (a)(3) (iv) of this section during that period.

(ii) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning fishing or receiving groundfish in the new area, and the position of the new activity. The notice must be sent to the Regional Director within 48 hours of shifting.

(iii) The notices required in paragraphs (a)(3) (i) and (ii) should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska, who will relay them to the Regional Director. Only if adequate private or commercial communications facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(iv) After the first catch or receipt of groundfish at sea by that vessel during that period and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel must submit a weekly catch or receipt report for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period, during which groundfish were caught or received at sea. Catch or receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 675.4 of this part. These reports must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Bering Sea and Aleutian Islands groundfish fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or received at sea by that vessel during the reporting period by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), whether retained, discarded, or off-loaded;

(E) The area in which each species or species group was caught; and,

(F) If any species or species groups were caught in more than one area during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area.

8. A new § 5675.25 is added to read as follows:

§ 675.25 Disposal of fishing gear and other articles.

(a) *Intentionally discarded or abandonded gear.* No fishing vessel may intentionally discard or abandon fishing gear, net fragments, or other articles which may interfere with fishing activities or cause damage to fishery resources and other marine animals. Exceptions to this rule will be allowed in case of emergencies involving the safety of the ship and/or crew or when officially authorized to do so.

(b) *Encountered abandoned or discarded gear.* If abandoned or discarded fishing gear, net fragments, or any other article described in paragraph (a) of this section is encountered, or in the event of accidental or emergency placing of such article into the FCZ, the operator of the vessel must make a reasonable attempt to recover the article or immediately report the incident to the Regional Director giving the

(1) Name of the reporting person and his vessel;

(2) Nature of the article;

(3) Location of the article; and

(4) Time and date of the incident.

[FR Doc. 85-19656 Filed 8-14-85; 9:57 am]

BILLING CODE 3510-22-M

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50 CFR Part 650

[Docket No. 50835-5035]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement management measures prescribed in the proposed Amendment 1 (Amendment) to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This action (1) establishes a four-ounce standard for Atlantic sea scallops, which becomes the minimum that the ten smallest sea scallops in a one-pint sample must weigh to achieve the maximum average meat count on an annual basis; (2) extends the enforcement of this standard beyond the point of first transaction in the United States; and (3) eliminates the adjustable meat count/shell height standard. The new measure is intended to improve the conservation

program for Atlantic sea scallops by reducing the mortality of small, immature sea scallops and enhancing yield per recruit and the reproductive potential of the resource.

DATE: Comments on the proposed rule must be received on or before September 27, 1985.

ADDRESSES: Comments on the proposed rule, Amendment 1, or supporting documents should be sent to Mr. Richard H. Schaefer, Acting Regional Director, National Marine Fisheries Service, Federal Building—14 Elm Street, Gloucester, Massachusetts 01930. Clearly mark "Comments on Scallop Amendment 1" on the envelope.

Copies of Amendment 1, the environmental assessment and the draft regulatory impact review/initial regulatory flexibility analysis are available from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Carol Kilbride, Scallop Management Plan Coordinator, 617–281–3600, ext. 244.

SUPPLEMENTARY INFORMATION: The FMP was approved and implemented by final regulations effective August 13, 1982 (47 FR 35990). This Amendment to the FMP was prepared by the New England Fishery Management Council (Council). A notice of availability for the Amendment was published in the **Federal Register** on July 18, 1985 (50 FR 29240). Copies of the Amendment are available from the Council upon request at the address given above.

Amendment 1 proposes a new management measure, a four-ounce standard for the ten smallest sea scallops in a one-pint sample, to reduce the potential for mixing unacceptably small sea scallops with large ones, and to achieve a 30-meat count average on an annual basis. The measure is intended to reduce the landing of immature scallops by harvesters.

When the Council originally developed the FMP, it was with the expectation that an average meat count/shell height standard would provide sufficient protection for small scallops to enhance yield per recruit and the reproductive potential of the resource. Analysis of catch and processing data since FMP implementation, however, shows that these measures have not provided sufficient protection for small scallops. During the spring and summer of 1983, significant numbers of very small, immature sea scallops recruited into the fishery in the South Channel area of Georges Bank were harvested at sizes as small as 80-meat count, and mixed with larger scallops taken in other resource areas to achieve the average meat count standard required by the FMP. A similar situation has occurred on the Northern Edge and Peak of Georges Bank, and in the New York Bight area during 1985.

Selective harvest of small sea scallops will, if continued, dissipate the benefits anticipated from FMP implementation by reducing yield per recruit and reproductive potential of the sea scallop resource. The Council and the industry have recognized this, and in an attempt to revise the management program to help achieve the original management objectives, they have agreed to impose a four-ounce standard corresponding to a 40-meat count minimum scallop size. The long-term analysis indicates that a 40-meat count minimum applied on a per-trip basis will result in approximately a 30-meat count average on an annual basis. This new measure is designed to reduce substantially the harvest and mixing of undersized scallops, while allowing fishermen some tolerance to cover those situations in which reasonable diligence to avoid the mixing of small scallops is not entirely successful. Additonally, the sampling technique for monitoring compliance with the new standard has been changed to a volumetric equivalent in order for fishermen to better gauge compliance at sea. Given the rapid growth rates of sea scallops, potential impacts will likely be mitigated at the end of one year after implementation for vessels that shuck at sea. The elimination of the shell height standard proposed by the Amendment may impose potentially greater impacts on any existing shellstockers (vessels that land sea scallops in the shell) because they will have to fish conservatively to avoid violating the four-ounce standard after the trip is shucked out. Landings for shellstockers should be made up at the beginning of the second year of implementation.

The existing FMP provides for enforcement of its measures only up to the point of first transaction in the United States. That provision recognizes that scallops, which when landed comply with the average meat count or minimum shell height, could later be sorted and graded into sizes that would not comply with the meat count if sampled at a later point. The Council has decided to impose the four-ounce standard as a possession prohibition to improve the ability of enforcement agents to monitor harvests for compliance. This action would authorize the National Marine Fisheries Service to enforce the new four-ounce standard on sea scallops at all times and places in the United States once they have been landed.

Although the average meat count/shell height standard could previously be adjusted within a certain given range, the Council proposes in the Amendment that the four-ounce standard will not be subject to regulatory change. Therefore, the fact-finding process which resulted in the temporary adjustment of the meat count/shell height standard would be abandoned. Annual review of the status of the resource by the Regional Director and the amendment process would now be the sole basis for any further change in the management of the fishery.

Changes in the Proposed Rule

The section on Compliance and Sampling Procedures (§ 650.21) has been modified from that proposed by the Council. The proposed regulatory text submitted by the Council spoke in terms of a sample group. It specifically provided that "[T]he person in possession of the scallops may request that as many as ten one-pint samples be examined as a sample group". This language is a vestige of the sampling procedure used to determine compliance with the average meat count measure that these regulations would supersede. It is inappropriate to the four-ounce standard, as compliance with this standard is not dependent upon a sample group.

The four-ounce standard, in essence, establishes a tolerance level for the number off containers or bags of small scallops that may be landed. It prescribes that only two bags or containers of scallops that do not meet the four-ounce standard may be landed. If a third bag or container of scallops in the total amount of scallop meats in possession is determined not to meet the four-ounce standard, this constitutes a violation of the regulations. Obviously, the person in possession of the scallops would not then demand to have seven more samples taken. Any more samples which were found not to meet the four-ounce standard would merely serve to compound the violation. Under the average meat count standard, the taking of more samples could certainly benefit the person in possession of the scallops since the authorized officer might weigh out samples which were well below the average. Thsee below-average scallop samples would offset those scallop samples which were above the average and possibly negate the existence of a violation.

The equities embraced in the sampling procedure pertaining to the average meat count standard have been preserved. If an authorized officer takes

a sample from a bag or container and determines that it fails to meet the four-ounce standard, the person in possession of the scallops may requre that another sample be taken from the bag or container. The officer will then average the scallop meats weighing less than four ounces in each sample. The average will determine if the sample meets the four-ounce standard. For example, if the first sample contains twelve scallops which together weigh less than four ounces and the second sample has only seven, this would yield a sample average of 9.5 scallops weighing less than four ounces. The bag or container would meet the four-ounce standard.

Classification

Section 304(a)(1)(C)(ii) of the Magnuson Act, as amended, requires the Secretary of Commerce (Secretary) to publish regulations proposed by the Council within 30 days of receipt of an amendment and proposed regulations. At this time, the Secretary has not determined that the Amendment proposed to be implemented by these rules is consistent with the National Standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views and comments received during the comment period.

The Council prepared an environmental assessment for this Amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address listed above.

The NOAA Administrator has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The proposed rule will result in a maximum $17.3 million reduction in goods to the national economy during the first year of implementation. Administrative and enforcement requirements are expected to remain either unchanged or be reduced. Thus, there are no impacts on Federal, State, or local government agencies. The purpose of the Amendment is to enhance productivity, and thus promote investment and innovation in the fishery once the industry has absorbed initial losses. Therefore, the proposed rule will not have a significa nt adverse effect on the United States sea scallop industry. The Council prepared a regulatory impact review (RIR) which concludes that this rule will produce long-term benefits associated with the achievement of the FMP objectives within the third year of implementation. A copy of this review may be obtained from the Council at the address listed above.

This proposed rule is exempt from the review procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 97-453, require the Secretary to publish this proposed rule within 30 days of its receipt. The proposed rule is being reported to the Director of the Office of Management and Budget with an explanation why it is not possible to follow the review procedures of the order.

The Council prepared an initial regulatory flexibility analysis as a part of the RIR, which concludes that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small entities because all vessels operating in the fishery will be affected in the same way, and that there will be no differential effects. A copy of this analysis may be obtained from the Council at the address given above.

This proposed rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Delaware, and North Carolina. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting requirements.

Dated: August 13, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to amend 50 CFR Part 650 as set forth below:

PART 650—[AMENDED]

1. The authority citation for Part 650 continues to read as follows:

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

2. The Table of Contents is amended by revising the headings for §§ 650.20 and 650.22 to read as follows:

Subpart B—Management Measures

Sec.

650.20 Four-ounce standard.

* * * * *

650.22 Review of resource status.

§ 650.1 [Amended]

3. In § 650.1, the last sentence of the paragraph is amended by adding the phrase, ", and possession of Atlantic sea scallops in the fishery conservation zone and anywhere in the United States."

4. In § 650.2, the definition of *First transaction in the United States* is removed, the definition of *Non-conforming Atlantic sea scallops* is revised, and the definition of the *Four-ounce standard* is added alphabetically as follows:

§ 650.2 Definitions.

* * * * *

Non-conforming Atlantic sea scallops means scallops which do not meet the standards specified in § 650.20 of these regulations, *unless*, for the purposes of compliance with the four-ounce standard measurement provisions of that section, the scallops have been certified, through a procedure specified by the Regional Director, to have been taken under a management system which the Regional Director finds to be substantially consistent with the conservation objectives of the FMP and these regulations. Certified sea scallops will be deemed to be non-conforming unless they are accompanied at all times by positive documentary evidence of their certification.

* * * * *

Four-ounce standard means that the ten smallest sea scallops in a one-pint sample must weigh at least four ounces.

* * * * *

5. In § 650.7, the paragraph (a) is revised to read as follows (the introductory text is reprinted without change for the convenience of the reader):

§ 650.7 Prohibitions.

It is unlawful for any person:

(a) To possess any non-conforming Atlantic sea scallops once they have been landed in the United States.

(1) Atlantic sea scallops will be subject to inspection at all times and places in the United States for conformance with the four ounce standard, in accordance with the compliance and sampling procedures specified in § 650.21.

(2) Atlantic sea scallops will be subject to inspection at all times and places in the United States for

conformance with certification provision, where applicable.

* * * * *

6. Section 650.20 is revised to read as follows:

§ 650.20 Four-ounce standard.

A four ounce standard corresponding to a 40-meat count minimum size shall apply to all sea scallops, whether the scallops are shucked at sea or landed in shell.

7. Section 650.21 is revised to read as follows:

§ 650.21 Compliance and sampling procedures.

(a) Compliance with the four-ounce standard will be subject to inspection at all times and places in the United States. For the purposes of inspecting scallops in the shell to determine compliance with the four-ounce standard, an authorized officer may, at his discretion, direct the person in possession of the scallops to shuck, or delay inspection until sufficient scallops have been shucked, to allow the taking of samples as specified below.

(b) The authorized officer will take one-pint samples from the total amount of scallop meats in possession. A sample fails to comply with the four-ounce standard if ten or more scallop meats in the sample weigh less than four ounces. If a sample fails to meet the four-ounce standard, the authorized officer may take, at the request of the person in possession, another sample from the bag or container from which the offending sample was drawn. The authorized officer will average the number of scallops weighing less than four ounces from both samples. The average number of scallop meats weighing less than four ounces will determine if the bag or container fails to meet the standard. Non-compliance with the four-ounce standard occurs if three or more samples from the total amount of scallop meats in prosession fail to meet the four-ounce standard.

8. Section 650.22 is revised to read as follows:

§ 650.22 Review of resource status.

(a) *Scope and purpose of review.* The Regional Director will review the status of the Atlantic sea scallop resource on a continuing basis, and will, at least annually, prepare a report concerning the status of the fishery and possible changes in the resource, fishery, or industry which might require amendment of the EMP. The Council may, at any time, request that such a report be prepared within sixty days.

(b) *Sources of information.* The Regional Director will consider all available resource and assessment information, especially the most recently completed survey and assessment, when preparing his report. The Regional Director will also consider: reports and records maintained by fishermen and made available as a part of the fishery statistics program; other fishery statistics; and any other available information which increases understanding of prevailing conditions of the stock, the fishery, and the industry.

[FR Doc. 85-19657 Filed 8-14-85; 9:27 am]

BILLING CODE 3510-22

Notices

Federal Register
Vol. 50, No. 159
Friday, August 16, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Intent to Establish the Agriculture Structure Planning Advisory Committee and Notice of Meeting

Notice is hereby given that the Secretary of Agriculture intends to establish the Agriculture Structure Planning Advisory Committee.

The purpose of the committee will be to review and evaluate USDA-developed proposals concerning the organizational structure of the Department and future program delivery.

Establishment of this committee is in the public interest in connection with the performance of duties of the Department. Written comments on the proposed establishment of this committee may be submitted to Charles Grizzle, Room 241E, Administration Building, Washington, D.C. 20250, until September 3, 1985.

Contingent upon the timely establishment of the committee, and pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, as amended, notice is hereby given that the first meeting of the committee will be held on September 4–5, 1985, at the Shoreham Hotel, Washington, D.C. The meeting will commence at 8:00 a.m. and end at 5:30 p.m. on September 4 and commerce at 8:00 a.m. and end at 4:30 p.m. on September 5.

The committee will be reviewing proposals developed within USDA relating to administrative support and headquarters/field structures and developing comments on those proposals which will be presented to the Department at the close of the meeting.

The meeting will be open to the public, however, limited space will be available. Written comments may be submitted to Mr. Grizzle at the above address. Persons desiring more specific information concerning the meeting should contact Mr. Grizzle at 202–447–3590.

John J. Franke, Jr.,
Assistant Secretary for Administration.
August 13, 1985.

[FR Doc. 85–19558 Filed 8–15–85; 8:45 am]
BILLING CODE 3410–01–M

Proposal To Exclude Department of Agriculture Programs From Executive Order 12372

AGENCY: Department of Agriculture, USDA.

ACTION: Notice.

SUMMARY: This Notice proposes that Rural Electrification Loans and Loan Guarantees, Rural Telephone Loans and Loan Guarantees, and Rural Telephone Bank Loans to either nongovernmental or governmental entities be excluded from coverage under Executive Order 12372, "Intergovernmental Review of Federal Programs." Public comment is sought on these proposed exclusions. A full understanding of the requirements of the Order may be gained by referring to the final rules published in 7 CFR Part 3015, Subpart V, at 48 FR 29100, dated June 24, 1983.

DATE: Comments must be received on or before September 30, 1985.

ADDRESS: Interested persons should submit comments to Ms. Lyn Zimmerman, Office of Finance and Management, USDA, Room 2117–B, Auditors Building, 201 14th Street, SW., Washington, D.C. 20250. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Lyn Zimmerman, Supervisory Program Analyst, Office of Finance and Management, USDA, Room 2117–B, Auditors Building, 201 14th Street, SW., Washington, D.C. 20250. (Telephone (202) 382–1553).

Background

In a recent report to the President on Executive Order 12372, the Office of Management and Budget (OMB) concluded that although the Order has improved Federal, State, and local government relations, a number of procedural changes would improve the Order's implementation. Prominent among the procedural changes was a reexamination of existing coverage to determine that exclusions are justified on the basis that the program does not directly affect State and local governments.

Executive Order 12372 has as one of its purposes the development of a review process to replace OMB Circular A–95. Although REA-financed activities were never subject to Circular A–95 review, a determination was made that loans or loan guarantees made to those REA borrowers deemed to be governmental entities (71 of approximately 2,000 borrowers) would be included within the scope of the Executive Order, even though REA makes no distinctions in its treatment of loan requests from governmental versus nongovernmental borrowers.

On January 24, 1983, the Department indicated in a notice of proposed rulemaking (48 FR 3082) that REA loans and loan guarantees to nongovernmental entities would be excluded from coverage under the Executive Order. The proposed exclusion produced only five letters and only one of the five requested that REA Electrification Loans and Loan Guarantees be subject to Executive Order 12372. No comments were received regarding Rural Telephone Loans and Loan Guarantees or Rural Telephone Bank Loans. On June 24, 1983, the Department published its final rule (48 FR 29100) excluding REA loans and loan guarantees to nongovernmental entities from coverage under the Executive Order.

SUPPLEMENTARY INFORMATION: On May 8, 1973, The Committee of Conference on S. 394, which amended the Rural Electrification Act, articulated Congressional intent regarding the Office of Management and Budget (OMB) Circular A–95 coverage of the Rural Electrification Administration (REA) loan programs as follows:

> Since January 1, 1973, loans for rural electrification and rural telephone facilities have been processed pursuant to section 306(a)(1) of the Consolidated Farm and Rural Development Act. Under this Act the Secretary of Agriculture is required to submit all such loan applications for review and comment to multijurisdictional substate areawide general purpose planning and development agencies which have been officially designated as clearinghouse agencies under OMB Circular A–95, and to county and municipal governments having

jurisdiction over the area in which the proposed facilities will be located.

In the case of loans for rural electrification and rural telephone facilities, this requirement serves no useful purpose, and imposes unnecessary delays on loan approval procedures. It has never been applied to Rural Electrification Act loan programs. One of the principal purposes of S. 394 is to reinstate a rural electrification and rural telephone loan program which will operate free of these requirements for review by units of local government and multijurisdictional planning agencies.

It is the specific understanding and the clear intent of the conferees that direct loans, insured loans, and loan guarantees, approved pursuant to the Rural Electrification Act of 1936, as amended, shall not be subject to review by any such multijurisdictional substate planning or development agency or commission or by any unit of local government, or by any Federal agency other than REA.

The above stated Congressional intent formed the basis for excluding REA loan programs from OMB Circular A-95 review requirements.

Even though they are private organizations, REA-financed systems are subject to State and local requirements that are applicable to the planning and construction of utility facilities in their service areas including zoning and the use of streets and highways. In those cases where REA-financed systems come under the jurisdiction of State public utility commissions (PUCs), their activities, including the receipt of financial assistance from REA, are reviewed by PUCs. In a number of States REA borrowers receive a franchise to provide utility service in a specified geographical area.

In those cases where the consideration of extending REA financial assistance requires the preparation of an environmental impact statement, such statements are sent to State and local agencies and other interested groups for review and comment in accordance with the requirements of the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. In the event that REA will prepare an environmental assessment under the CEQ regulations or the proposal will be located in a flood plain or wetlands, local public notice is provided. State and local agencies and the general public are thus afforded an opportunity to review and comment on a proposal prior to any REA determination concerning financial assistance. Even for minor projects which do not require public notice, REA-financed systems normally contact state and local environmental and planning agencies prior to making application to REA for financial assistance.

Based on the adequacy of the existing consultation requirements, the REA programs listed below by Catalog of Federal Domestic Assistance Numbers and as they pertain to both governmental and nongovernmental entities, are proposed for exclusion from the scope of Executive Order 12372:

10.850 Rural Electrification Loans and Loan Guarantees
10.851 Rural Telephone Loans and Loan Guarantees
10.852 Rural Telephone Bank Loans

Following the end of the comment period, the Department will study all comments received and make a determination on whether to exclude or include the REA programs. A Notice will be published in the **Federal Register** announcing the determination.

Dated: August 9, 1985.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 85-19615 Filed 8-15-85; 8:45 am]

BILLING CODE 3410-15-M

Forest Service

Ridge Timber Sale; Okanogan National Forest, Okanogan County, WA; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of the Ridge Timber Sale on the Twisp Ranger District. The environmental impact statement will be prepared in accordance with existing approved land and resource management plans.

A range of alternatives for timber harvest in the assessment area will be considered. One of the alternatives will be No Action. Other alternatives will consider harvest ranging from approximately 7,000 mbf to 9,000 mbf on approximately 1000 to 1600 acres. Road construction alternatives include no construction to approximately 16 miles of new roads.

Federal, State and local agencies, potential purchasers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed.

2. Identification of issues to be analyzed in-depth.

3. Elimination of insignificant issues, those covered by previous environmental analysis, and those issues not within the scope of this decision.

4. Determination of potential cooperating agencies and assignment of responsibilities.

The Forest Supervisor will accept written comments and suggestions to his office at the Okanogan National Forest, Okanogan, Washington until November 29, 1985. The Twisp District Ranger or his staff will be available to accept comments and suggestions via telephone or in person November 17-21 at the Twisp District Office (509) 997-2131.

William D. McLaughlin, Forest Supervisor of the Okanogan National Forest is the responsible official.

The analysis is expected to take about 4 months. The draft environmental impact statement should be available for public review by April, 1986.

Written comments and suggestions concerning the analysis should be sent to William D. McLaughlin, Forest Supervisor, 1240 2nd Avenue, Box 950, Okanogan, Washington 98840.

Questions about the proposed action and environmental impact statement should be directed to John C. Erickson, Forest Service, USDA; Twisp Ranger District, Okanogan National Forest, P.O. Box 188, Twisp, Washington 98856. Information packets are available upon request from the Okanogan National Forest Supervisor's office or the Twisp Ranger District office.

Dated: August 5, 1985.

William D. McLaughlin,

Forest Supervisor.

[FR Doc. 85-19551 Filed 8-15-85; 8:45am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on September 6, 1985, at the U.S. Commission on Civil Rights, 230 South Dearborn Street, Room 3280—Conference Room, Chicago, IL. The purpose of the meeting is to discuss Civil Rights developments in the state and future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzberg or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371 (TDD 312/886-2188).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-19577 Filed 8-15-85; 8:45 am]

BILLING CODE 6335-01-M

Nevada Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 p.m. on September 14, 1985, at the Holiday Inn, 5851 South Virginia Street, Tahoe C. Room, Reno, Nevada. The purpose of the meeting is to discuss plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth Nozero or Philip Montez, Director of the Western Regional Office at (213) 688-3437, (TDD 213/894-0508).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, August 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-19578 Filed 8-15-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Construction Project Report (Multifamily Residential)
Form number: Agency—C-700 (R); OMB—0607-0163
Type of request: Extension of a currently approved collection
Burden: 3,000 respondents; 7,500 reporting hours

Needs and uses: This report is used to collect the amount of construction put in place each month from a nationwide sample of new townhouses and apartment projects. These statistics are used extensively by the Federal government in making policy decisions and they become part of the GNP. They are also used by the private sector for market analysis and other research.

Affected public: Businesses or other for-profit institutions
Frequency: Monthly
Respondent's obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 12, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-19606 Filed 8-15-85; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 27-85]

Proposed Foreign-Trade Zone—Sparks, NV Within the Reno Customs Port of Entry; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Nevada Development Authority, a Nevada non-profit corporation and grantee of FTZ 89, Las Vegas, requesting authority to establish a general-purpose foreign-trade zone in Sparks, Nevada, within the Reno Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 2, 1985. The applicant is authorized to make this proposal under section 237A.030 of the Nevada Revised Statutes.

The proposed foreign-trade zone will involve a 24-acre site on Spice Island Drive near the Reno International Airport, to be operated by the Nevada International Trade Corporation, an affiliate of the Economic Development Authority of Western Nevada. Zone warehousing services will be provided by Dermody Properties, Inc., a warehousing firm and developer that owns the site.

The application contains evidence on the need for zone services in the Reno area. A number of firms have indicated an interest in using zone procedures for storage and manipulation of products such as energy equipment, paper, semi-conductor components, computer and other electronic equipment, skis and gaming equipment. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul R. Andrews, District Director, U.S. Customs Service, Pacific Region, 555 Battery St., San Francisco, CA 94111; and Colonel Wayne J. Scholl, District Engineer, U.S. Army Engineer District Sacramento, 650 Capitol Mall, Sacramento, CA 95814.

As part of its investigation, the examiners committee will hold a public hearing on September 11, 1985, beginning at 9:00 a.m., in Washoe County Commission Chambers, 1205 Mill St., Reno NV 89502.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by September 3. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 11, 1985.

A copy of the applicaton and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1755 E. Plumb Lane, #152, Reno, NV 89502
Office of the Executive Secretary, Foreign-Trade Zones board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230

Dated: August 12, 1985.

John J. Da Ponte Jr.,

Executive Secretary.

[FR Doc. 85-19605 Filed 8-15-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 50719-5119]

Proposed Federal Information Processing Standard for Specification for a Data Descriptive File for Information Interchange (DDF)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of proposed Federal Information Processing Standard.

SUMMARY: This proposed standard adopts a voluntary International standard, ISO 8211—Specification for a Data Descriptive file for Information Interchange (DDF), for Federal use. The American National Standards Institute (ANSI) is expected to approve this standard in October 1985 as an American National Standard (ANS).

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval as a Federal Information Processing Standard (FIPS), it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard, is provided in its entirety in this notice; and (2) a specification portion which deals with the technical requirements of the standard, ISO 8211—Specification for a Data Descriptive File for Information Interchange (DDF). Interested parties may obtain a copy of the technical specifications from the Computer and Business Equipment Manufacturers Association (CBEMA), Attn: X3 Secretariat, 311 First Street, NW, Washington, DC 20001, (202) 737-8888.

DATE: To be considered, comments on this proposed FIPS must be received on or before November 14, 1985.

ADDRESS: Comments concerning the adoption of ISO 8211 as a FIPS are invited and may be sent to Director, Institute for Computer Sciences and Technology, ATTN: Proposed FIPS for DDF, National Bureau of Standards, Technology Building, Room B154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Upperman, Center for Programming Sciences and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-2431.

Dated: August 13, 1985.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication

Date

Announcing the Standard for Specification for a Data Descriptive File for Information Interchange (DDF)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Specification for a Data Descriptive File for Information Interchange (DDF) (FIPS PUB ——).

2. *Category of Standard.* Software Standard, Information Interchange.

3. *Explanation.* This publication announces the adoption of the international Standard ISO 8211, Specification for a Data Descriptive File for information Interchange (DDF), as a Federal Information Processing Standard (FIPS). ISO 8211 specifies media/independent and system-independent file and record formats for the interchange of information between computer systems. The standard is intended for use with physical media as well as with communications media in applications where a high volume of data is to be interchanged, rather than for an isolated interchange of a single or small number of records. The purpose of the standard is to provide a mechanism to allow data structures to be easily transported from one computer system to another computer system, independent of make, with the capability of restructuring the data without loss of content or meaning. The standard is for use by implementors and users who have a need to represent data structures and data definitions in a standard format for information interchange purposes so that the data can be transported from one system to another while maintaining the integrity of the data.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* ISO 8211—Specification for a Data Descriptive File for Information Interchange (DDF).

7. *Objectives.* The primary objectives of this standard are:

—To permit data structures, data files, data definitions, and databases to be easily transported from one computer system to another computer system, where the two systems are not necessarily compatible, without loss of content or meaning.

—to reduce the cost of information interchange when data must be transported from one computer system to another computer system where the two systems are not necessarily compatible.

—to provide a standard interchange format when migration from one computer system to another computer system occurs.

—to provide a standard interchange format for achieving data for future recall by assuring that standard software will be available for this purpose.

8. *Applicability.*

a. This standard is intended for use in information interchange applications that are either developed or acquired for government use. It is suitable for representing and interchanging a broad spectrum of data structures including: elementary data, vectors, arrays, and hierarchies. User file structures such as sequential, hierarchical, relational, and indices can be converted into the interchange format. Network structures can be interchanged but additional pre-processing and post-processing is necessary to preserve logical linkages. The data to be interchanged can be in character representation or binary representation. The intermediate structure through which the information passes is designed for interchange purposes only and is not intended to be used for general processing. This standard should be used unless a more efficient or cost effective alternative already exists. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of more specialized data interchange software such as the Initial Graphics Exchange System (IGES), Computer Graphics Metafile (CGM), or other application specific data interchange software.

b. The use of this standard is strongly recommended when one or more of the following situations exist:

—The data file or database is maintained at a central facility for a decentralized system that employs computers of different makes and models that must utilize the data.

—The data file or database is intended for conversion or is being converted from one computer system to another computer system where the two systems are not necessarily compatible.

—The data file or database is being migrated from one computer system to another computer system where the two systems are not necessarily compatible.

—The data file or database is intended for information interchange between a source system and a target system that are not necessarily compatible.

—The data file or database is intended for archival purposes and the format of an access to a standardized structure is critical to guarantee long life availability and utilization of the data through standardized software support.

c. Non-standard features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard features can be very useful, it should be recognized that the use of these or any other non-standard elements may make the interchange of data and future conversion to a revised standard or replacement processor more difficult and costly.

9. *Specifications.* ISO 8211—Specifications for a Data Descriptive File for Information Interchange (DDF) contains the specifications for FIPS DDF. The ISO 8211 document defines the scope of the specifications, control fields, format controls, leaders, directories, and requirements for a conforming implementation. All of these specifications apply.

10. *Implementation.* The implementation of this standard involves two areas of consideration: acquisition of DDF software and interpretations of DDF software.

10.1 *Acquisition of Data Interchange Software.* This publication is effective (date of approval of this document). Data interchange software acquired for Federal use after this date should implement this standard when the applicability criterion in section 8 has been met. Conformance to FIPS DDF should be considered whether data interchange software is developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

A transition period provides time for industry to produce data interchange software conforming to the standard. The transition period begins on the effective data and continues for eighteen (18) months thereafter. The provisions of this publication apply to orders placed after the date of this publication; however, data interchange software not conforming to FIPS DDF may be acquired for interim use during the transition period.

10.2 *Interpretation.* Resolution of questions regarding this standard will be provided by NBS. Questions concerning the content and specifications of this FIPS PUB should be addressed to: Director, Institute for Computer Sciences and Technology, ATTN: DDF Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

[FR Doc. 85-19521 Filed 8-15-85; 8:45 am]
BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of Japan To Review Trade in Categories 313 (Cotton Sheeting) and 340 (Men's and Boys' Woven Cotton Shirts)

August 13, 1985.

On July 29, 1985 the Government of the United States requested consultations with the Government of Japan with respect to Categories 313 and 340. This request was made on the basis of the Agreement, effected by exchange of notes dated August 17, 1979, as amended and extended, between the Governments of the United States and Japan relating to trade in cotton, wool and man-made fiber textiles and textile products and on the basis of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may request the Government of Japan to limit exports in Categories 313 and 340, produced or manufactured in Japan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985 at levels of 5,966,740 square yards and 95,552 dozen, respectively.

Summary market disruption statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 313 and 340 under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of Japan, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Japan—Market Statement

Category 313—Cotton Sheeting

July 1985.

Summary and Conclusions

United States imports of Category 313 from Japan during the year-ending May 1985 were 5.4 million square yards, almost five times the exports of a year earlier. Imports from Japan increased from 885,000 in 1983 to 2,130,000 square yards in 1984.

The U.S. market for cotton sheetings has been severely disrupted by imports for several years. Imports were near or above domestic production during the 1981 through 1984 period, exceeding domestic production by 37 percent in 1984. The sharp and substantial increase in imports from Japan are contributing to the disruption and a continuation of the growth creates real risks of more intensive disruption.

U.S. Production and Market Share

U.S. production of Category 313 has sharply declined over the past decade and one-half. Production in 1984 was 299 million square yards, the second lowest level on record; the recession year of 1982 was 6 percent less. Production for the first quarter of 1985 was 80,511 square yards, up marginally from January-March 1984. Second quarter production, according to trade reports, was down due to a glut of supplies available for a very soft market.

The U.S. producers share of the market for domestically produced and imported Category 313 dropped sharply to 42.1 percent in 1984 from 70.1 percent in 1979.

U.S. Imports and Import Penetration

U.S. imports of Category 313 from all sources trended upwards for a number of years. They reached a record 410.6 million square yards in 1984, up 80 percent from 1979 and 28 percent from 1983. Imports during the first quarter of 1984 were down from the record imports of the January-March 1984 period; however, imports surged in April and May when they totaled 78.4 million square yards. This compares with 71.3 million square yards imported a year earlier.

The ratio of imports to domestic production increased from 42.7 percent in 1979 to 137.3 percent in 1984. Although there was a decline in the ratio during the first quarter of 1985, the surge in April and May coupled with a slowdown in domestic production indicate that the ratio drop in the first quarter was temporary.

Duty-Paid Values and U.S. Producer Prices

Approximately 37 percent of the Category 313 imports from Japan enter under TSUSA No. 320.2934. This is grey fabric with yarn count in the twenties, under six ounces in weight. Grey fabrics of various types, including TSUSA No. 320.2934, make up 50 percent of the total imports. The remaining imports are scattered over a number of TSUSA numbers. The duty-paid landed values of these fabrics from Japan are below the U.S. producer prices for comparable fabrics. The value/price comparison for TSUSA No. 320.2934 is indicative of these differences.

Summary and Conclusion

United States imports of Category 340 from Japan were 85,000 dozens for the year-ending May 1985. Imports were 21,000 dozens for the same period one year earlier. Full year 1984 imports were 58,000 dozens, up nearly three-fold from the 15,000 dozens imported in 1983.

Import growth from Japan of Category 340 has been sharp and substantial, adding to the existing market disruption in this category. Continued uncontrolled growth would intensify the market disruption.

General Imports

Imports of Category 340 from all sources increased 29 percent between 1983 and 1984. In the first five months of 1985 imports of this category increased 33 percent from the same period in 1984. The overall growth rate from 1980 to 1984 was 45 percent; seventy-two percent of this growth occurred in 1984 alone.

U.S. Production and Market Share

U.S. Production of this category has declined over 50 percent since 1973. Between 1980 and 1983 production declined from 5,526,000 dozens to 4,493,000 dozens, a drop of 19 percent. Production in 1984 reached 5,125,000 dozens up 14 percent from 1983, but still below the 1980 level. Cuttings of all men's and boys' woven shirts declined 5.3 percent in the first four months of 1985.

Imports have captured much of the market growth and have also displaced domestically produced MB cotton woven shirts in the market. The U.S. Category 340 market increased over 2 million dozens during 1980–1984. During that time imports increased by about 2.8 million dozens, while domestic production was reduced by 401,000 dozens. The U.S. producers' market share for Category 340 was 46.7 percent in 1980 and only 35.8 percent in 1984.

Import Penetration

The import-to-production ratio for this category has increased sharply over the last 5 years. In 1980 the ratio topped 100 percent for the first time, reaching 114 percent. By 1983 the ratio had climbed over 44 percentage points to 158.5 percent. The substantial increase in imports in 1984 helped boost the ratio an additional 20.5 percentage points, to 179.0 percent.

Employment

Employment in the men's and boys' shirt industry was 99,200 workers in 1984.[1] This is approximately the same level as in 1980. In the first five months of 1985 employment was down 4.0 percent from the same period one year earlier.

Import Value vs Domestic Producers' Price

Approximately 90 percent of Category 340 imports from Japan entered under two TSUSA numbers. These were 379.5520—other men's cotton dress shirts, and 379.5520—other men's cotton sport shirts. These items entered at duty-paid values below the U.S. producers' price for comparable garments.

[FR Doc. 85-19608 Filed 8-15-85; 8:45 am]
BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With the Republic of South Africa on Trade in Categories 347/348 and 604

August 13, 1985.

On July 31, 1985 the Government of the United States, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of the Republic of South Africa to enter into consultations concerning exports to the United States of man-made fiber yarns in Category 604 and cotton trousers in Category 347/348, produced or manufactured in South Africa.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in these categories, produced or manufactured in South Africa and exported to the United States during the twelve-month period which began on July 31, 1985 and extends through July 30, 1986 at levels of 246,859 dozen (Category 347/348) and 966,346 pounds (Category 604).

Anyone wishing to comment or provide data or information regarding the treatment of Ctegories 604 and 347/348 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Republic of South Africa—Market Statement

Category 604—Man-Made Fiber Spun Yarn

July 1985.

Summary and Conclusions

U.S. imports of man-made fiber spun yarn from the Republic of South Africa were 1.1 million pounds during the year-ending May 1985 compared with 125,000 a year earlier and only 18,000 in 1983. Category 604 imports from the Republic of South Africa are heavily concentrated in TSUSA No. 310.5049—plied acrylic yarn and 310.4047—polyester singles yarn. The plied acrylic yarns imports during January—May 1985 were 199,493 pounds or 49 percent of the total category imports of 408,155 pounds. Polyester singles yarns imports were 203,191 pounds or 50 percent of the total.

[1] SIC 2321, Men's and boys' shirt and nightwear industry.

The Republic of South Africa was the third largest supplier of polyester yarns, accounting for 12 percent of total imports during the year ending May 1985. All of South Africa's polyester yarn exports to the U.S. in 1984 and 1985 were polyester singles yarn. The Republic of South Africa was the largest supplier of polyester singles yarn, accounting for 22 percent of the total imports during the year ending May 1985. Imports during that period were 725,000 pounds, more than 10 times the imports of a year earlier. Imports of plied acrylic yarn during the year ending May 1985 were 312,166 pounds, more than six times the amount imported a year earlier.

The U.S. markets for both the plied acrylic and polyester yarns are being disrupted by imports and the imports from the Republic of South Africa are contributing to these disruptions.

U.S. Production and Market Share

Data are not yet available on U.S. production of Category 604 as a whole; however, current data are available on both the polyester and plied acrylic parts which the Republic of South Africa ships. Production of Category 604, prior to 1984, was erratic following no distinct trend. The U.S. producer's share of the market for domestically produced and imported Category 604 was around 95 percent recently.

Production of plied acrylic yarn (shipments by domestic industry) trended downward dropping from 44.7 million pounds in 1981 to 35.8 million in 1984. The U.S. producer share of the market declined from 76.5 percent in 1981 to 63.6 percent in 1984. Production for the first five months of 1985 was 14.7 million pounds, down 12 percent from January—May 1984.

Production of polyester sales yarn, 31 count and finer, declined from 6.4 million pounds in 1981 to 4.7 million in 1984. The U.S. producers share of the market declined from 79 percent in 1981 to 50 percent in 1984. Production for the first four months of 1985 was 1,794,000 pounds, down five perent from a year earlier.

U.S. Imports and Import Penetration

U.S. imports of Category 604 increased from 19.0 million pounds in 1981 to 33.1 million in 1984. The ratio of imports to production increased from 3.1 percent in 1981 to 3.8 percent in 1983 and probably some what higher in 1984 since imports increased.

U.S. imports of plied acrylic yarn increased by 48 percent from 1981 through 1984. Imports for the first five months of 1985 were up 1.59 percent from a year earlier. May 1985 imports were double those of a year earlier. The ratio of imports to domestic production of plied acrylic yarn increased from 30.8 percent in 1981 to 57.1 percent in 1984. The ratio during January—May 1985 was 58.0 percent.

Polyester yarn imports, 31 count and finer, increased two and three-quarter times from 1,721,000 pounds in 1981 to 4,756,000 in 1984. The ratio of imports to production increased from 26.8 percent to 100.3 percent over the period. The ratio jumped to 160.5 percent during the first four months of 1985.

Values and Prices

The duty-paid landed values of imports from the Republic of South Africa are below the U.S. producer prices for comparable yarns.

Summary and Conclusions

United States imports of Categories 347/348 from the Republic of South Africa were 283,000 dozens for the year ending May 1985. This was over nine times greater than the 29,000 dozens imported one year earlier. Imports from the Republic of South Africa were 174,000 dozens for full-year 1984, 7,000 dozens in 1983 and 3,000 dozens in 1982.

The markets for Categories 347 and 348 have been disrupted and the substantial growth in imports from the Republic of South Africa contributed to this disruption. Continuation of this rapid growth would further disrupt the markets.

U.S. Market

The markets for domestically produced and imported cotton trousers increased by close to 7 million dozens during 1982–1984. Imports captured over 85 percent of the gain. Since 1982, imports have increased by 6 million dozens. During this same time period, the U.S. producers' share of the cotton trouser markets declined from 75 percent to 68 percent.

U.S. Production

Cotton trouser production was up in 1984, increasing to 40,895,000 dozens from 39,715,000 in the previous year. Indicators are that U.S. producers are facing a worsening position in 1985. Cuttings of men's trousers were down 5.1 percent and women's trousers were off 6.3 percent for the first four months of 1985. Also, average weekly man-hours in the men's and boys' trouser industry during January—May 1985 were off by 7.9 percent compared to the same period in 1984.

Imports and Import Penetration

Imports were relatively stable during the late seventies and early eighties. However, they increased sharply in 1983 and significantly in 1984. The ratio of imports to domestic production increased from 32.9 percent in 1982 to 45.5 percent in 1983 to 46.9 percent in 1984.

Duty-Paid Value and U.S. Producer's Price

Approximately 80 percent of the Republic of South Africa's imports of this combined category entered under Category 348 in the year ending May 1985. Over 70 percent of the Category 348 imports entered under four TSUSA numbers. These were 383.4726—WGI other cotton shorts, not knit or ornamented, 383.4747—women's other cotton trousers and slacks denim, not knit or ornamented, 383.4753—women's cotton trousers, slacks, etc., corduroy, NSPF, not knit or ornamented and 383.4761—women's other cotton trousers, slacks, etc., NSPF, not knit or ornamented. Close to three-quarters of the Category 347 imports entered under three TSUSA numbers. These were 379.6210—men's and boys' cotton shorts, not knit or ornamented, 379.6220—men's cotton trousers and slacks, denim, not knit or ornamented, and 379.6250—boys cotton trousers and slacks, denim, not knit or ornamented. These trousers entered at duty-paid values well below the U.S. producers' prices for comparable trousers.

[FR Doc. 85–19609 Filed 8–15–85; 8:45 am]

BILLING CODE 3510-DR

Adjusting Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Taiwan

August 13, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 13, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

The bilateral agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan provides, among other things, for percentage increases in certain categories during an agreement year for swing, provided corresponding reductions in equivalent square yards are made in other specific limits or sublimits during the same year. Pursuant to terms of the agreement, as amended, the import restraint limit established for Category 448 (women's, girls' and infants' wool trousers), exported during the twelve-month period which began on January 1, 1985 is being increased from 11,792 dozen to 12,382 dozen. The limit for Category 319 (cotton duck fabric) is being reduced to 19,003,599 square yards.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 F.R. 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 13, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 21, 1984, the Chairman of the Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse

for consumption, of goods exported during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, in excess of designated restraint limits. The Chairman further advised you that the restraint limits are subject to adjustment.[1]

Effective on August 13, 1985, the directive of December 21, 1984 is hereby further amended to include adjusted restraint limits for the following categories.

Category	Adjusted 12-mo. restraint limit [1]
319	19,003,599 square yards.
448	12,382 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1984.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-19607 Filed 8-15-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1985 commodities and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: August 16, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 10 and June 7, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 19777 and 50 FR 24018) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1985:

Commodities

Potatoes, White, Fresh: 8915-00-456-6111 (Whole), 8915-00-228-1945 (Diced)
(Requirements for Defense Logistics Agency in North Carolina and South Carolina only)

Services

Commissary Shelf Stocking and Custodial, Altus Air Force Base, Oklahoma

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodity is hereby deleted from Procurement List 1985:

Bag, Lunch: 8105-00-664-3715

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 85-19596 Filed 8-15-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before September 18, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystall Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodities

Bookcase, Steel, Contemporary: 7110-00-601-9821
Pillow, Bed Feather: 7210-01-015-5190
(portion of Government requirement not on Procurement List)

Services

Commissary Shelf Stocking and Custodial, Fort Leavenworth, Kansas
Commissary Shelf Stocking and Custodial, Carlisle Barracks, Pennsylvania
Commissary Shelf Stocking and Custodial, Commissary and Commissary Annex, Fort Bliss, Texas
Commissary Shelf Stocking and Custodial, Fort Belvoir, Virginia
Janitorial/Custodial, Resources Management Office Building, 400 Riverside Drive, Clarkston, Washington

Deletions

It is proposed to delete the following commodities and services from Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodities

Circuit Card Assembly: 1430-00-409-7997
Circuit Card Assembly: 5826-00-237-9949
Pallet, Material Handling: 3990-00-599-5326

[1] The agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan provides that (1) specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal amount in square yards equivalent is deducted from designated categories and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Services

Janitorial Service, Naval Air Station Miramar, San Diego, California
Janitorial/Custodial (Grass cutting), U.S. Army Reserve Centers, Marcella Road, Hampton, Virginia, Butler Farm Road, Hampton, Virginia
Seedling Harvesting, USDA, Forest Service, Humboldt Nursery, McKinleyville, California

E.R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 85-19597 Filed 8-15-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that it plans to award a grant to the Southern States Energy Board (SSEB) in the amount of $99,992 in partial support of the Coal Trade Dialogue, which is a coal export project, investigation of coal use technologies, and evaluation of the imports of coal and electricity imports on the Southern economy. Pursuant to section 600.7(b) of the Federal Assistance Rules, 10 C.F.R. Part 600, DOE has determined that eligibility for this grant award shall be limited to the SSEB.

Procurement Request Number: 01-85FE60765.000

Project Scope

SSEB is a non-profit interstate agency governed by 16 member states and the Commonwealth of Puerto Rico. The Board serves as energy and environmental advisers to the Southern Governor's Association (SGA) and the Southern Legislative Conference Energy Committee.

The purpose of SSEB is to study the impacts on the southern economy and to provide scientific and technical expertise on energy and environmental quality matters to state officials and the general public.

The DOE is vitally interested in the work of SSEB and has determined that this award to SSEB on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Ronald White, MA-452.1, 1000 Independence Avenue SW., Washington, D.C. 20585.

Issued in Washington, D.C., on August 9, 1985.

Ben Goldman,

Director, Contract Operations Division A, Office of Procurement Operations.

[FR Doc. 85-19537 Filed 7-15-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy; Coal Policy Committee of the National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Data and Time: Thursday, September 5, 1985; 3:00 p.m. to 5:00 p.m.

Place: J.W. Marriott Hotel at National Place, 1331 Pennsylvania Avenue NW, Washington, DC.

Contact: Cecilia MacCarthy, U.S. Department of Energy, Room C-156, Office of Fossil Energy (FE-23), Germantown, Maryland 20545, Telephone: 301/353-2847.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Committee: To review requests for advice, information, etc., from the Secretary of Energy to the National Coal Council, and to recommend to the Council studies to be undertaken by the Council.

Tentative agenda:

- Opening remarks by the Chairman.
- Discussion of possible studies to be conducted by the Council in the coming year.
- Discussion of any other business brought before the Committee.
- Public Comment—10 minute rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Cecilia MacCarthy at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on August 12, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-19533 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy; National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Friday, September 6, 1985; 10:00 a.m. to 12:00 Noon.

Place: J.W. Marriott Hotel at National Place, 1331 Pennsylvania Avenue NW., Washington, D.C.

Contact: Cecilia MacCarthy, U.S. Department of Energy, Room C-156, Office of Fossil Energy (FE-23), Germantown, Maryland, 20545, Telephone: 301/353-2847.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

- Call to Order by John N. Dalton, Chairman of the National Coal Council.
- Remarks by John N. Dalton, Chairman of the National Coal Council.
- Remarks by Donald P. Hodel, Secretary of the Interior.
- Report of Members and Discussion of Activities by Chairmen of the Finance Committee and the Coal Policy Committee.
- Discussion of Any Other Business Properly Brought Before the National Coal Council by the Members and the Public Present.
- Public Comment—10 Minute Rule.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Cecilia MacCarthy at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between 9:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 12, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-19534 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

Grant; Common Study of Alcohol and Alcohol Blends as Motor Fuel

Summary

The Department of Energy announces that pursuant to 10 CFR 600.7(b), eligibility for a grant has been restricted to Swedish Motor Fuel Technology Company (SMFTC) to collect, classify and comment on data obtained by international experience in the generation and use of a alcohol and alcohol blends as motor fuels.

Background

The growing need for saving petorleum derivatives in transportation has led to the development of more energy-efficient cars and to the investigation of the potential for replacing petroleum derivatives partly or totally by alcohol. In order to increase the use of alcohol as a motor fuel, there is a need for establishing the conditions for its use under a broad range of operating and climatic situations. A state-of-the-art review and a thorough systems analysis approach to the technologies required for alcohol fuel production and application are necessary for that purpose. To provide as broad a background as possible and share experiences, several countries have, through the International Energy Agency (IEA), agreed to share their information, with comnpilation and presentation conducted by the Swedish Motor Fuel Technology Company.

This agreement is a cost shared project and has been generated through a series of meetings held in accordance with the IEA Agreement, which is supported by Canada, New Zealand, Sweden and U.S.A. The SMFTC is partially owned by the Swedish Government and was selected by that government to conduct the work for which the Swedish Government is responsible.

SMFTC has been the lead organization in Sweden on alcohol fuels processing and utilization R&D since 1975.

This activity contributes directly to the Alternative Fuels Utilization Program in that it supplements findings and documentation provided by contract activities in other countries.

Solicitation Number: DE-FG01-85CE50074

Scope of Project

The Grantee, the Swedish Motor Fuel Technology Company, under terms of the IEA Agreement entitled "Common Study of Alcohol and Alcohol Blends as Motor Fuels," shall classify and comment on data obtained by international experience in the generation and use of alcohol and alcohol blends as motor fuels.

Through the mechanisms of informing the participants on the Agreement as to the material to be covered, organization thereof, and the drafting of material via committee meetings and informal exchange, the grantee will develop the final document(s).

For further information contact: Mr. Craig C. Ashline, Contracting Officer, U.S. Department of Energy, Office of Procurement Operations MA-543.1, 1000 Independence Avenue, SW., Washington, D.C. 20585

Issued in Washington, D.C., on August 8, 1985.

Edward T. Lovett,

Acting Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 85-19581 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); Restriction of Eligibility

AGENCY: Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a Grant to the University of Hawaii, Department of Engineering and Computer Science in the amount of $100,000. The Statutory Authority authorizing the use of a grant award is Pub. L. 95-91, DOE Organization Act, and Pub. L. 93-577, Federal Non-Nuclear Energy Research and Development Act.

Grant No. DE-FG03-85SF15799

Scope of Project

The University of Hawaii proposes to conduct "Geothermal Research at the Puna Facility." Specifically, the proposed investigations will result in a better understanding of the scope and extent of the geothermal reservoir underlying the Puna area on the Big Island of Hawaii. The objective of the proposed research is to develop methods for extracting silica from the spent geothermal fluids of the Puna field, which will provide more efficient reinjection of the fluids and possible economic uses for recovered silica.

This award to the University of Hawaii, Department of Engineering and Computer Science is intended for specific goal-oriented geothermal research which will allow for more effective utilization of the Hawaii geothermal resource over the coming years. It is possible the application of the results of this research may extend the commercial life of the resource for a significant period of time.

The University of Hawaii has made substantial contributions to support the development and dissemination of geothermal resource data to the public sector, so that private industry and others will be stimulated to utilize the geothermal resources of the State as an economic alternative to fossil fuels. The University of Hawaii has published professional papers on its contributions to geothermal technology. There is no other such source of unique, independent knowledge and competence in the State of Hawaii. This award to the University on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Aundra Richards, U.S. Department of Energy, San Francisco Operations Office, Contracts Management Division, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, August 7, 1985

Donald W. Pearman, Jr.,

Acting Manager.

[FR Doc. 85-19579 Filed 8-15-85; 8:45am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); Restriction of Eligibility

AGENCY: Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a Grant to the University of Hawaii at Manoa, Division of Natural Energy Institute, in the amount of $75,000. The Statutory Authority authorizing the use of a grant award is Pub. L. 95-91, DOE Organization Act, and Pub. L. 93-577, Federal Non-Nuclear Energy Research & Development Act.

Grant No.: DE-FG03-85SF15798

Scope of Project

The University of Hawaii proposes to conduct a project which involves utilizing the Puna geothermal well and surface facilities (donated previously by DOE to the State of Hawaii) and the recently constructed Puna Geothermal Research Facility as a locus for assisting private individuals, small businesses and industry in the evaluation of direct uses for geothermal fluids.

It is imperative that strategies be developed to insure that the public sector become familiar with and utilize the geothermal technologies resulting from DOE-sponsored research and development. This proposed research provides a one-of-a-kind opportunity for the University of Hawaii to use their facilities and trained staff to assure geothermal research activities reach users in the public sector. Inasmuch as the DOE and its Natural Laboratory system is not adequately represented in the State of Hawaii and does not have the staff and facilities to effectively conduct a geothermal technology transfer program in that region; it is appropriate to use the sole significant source of geothermal expertise and knowledge in Hawaii, the University of Hawaii to carry out the geothermal technology transfer function. This award to the University of Hawaii on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Aundra Richards, U.S. Department of Energy, San Francisco Operations Office, Contract Management Division, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, August 7, 1985.

Donald W. Pearman, Jr.,

Acting Manager.

[FR Doc. 85-19580 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ES85-53-000]

Application; Idaho Power Co.

August 8, 1985.

Take notice that on July 17, 1985, Idaho Power Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act, seeking an Order authorizing the issuance and sale of up to 1,000,000 shares of Common Stock, par value of $2.50 per share, pursuant to the Applicant's Dividend Reinvestment and Stock Purchase Plan.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before August 16, 1985, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19649 Filed 8-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-55-002

Rate Change; Mountain Fuel Resources, Inc.

August 12, 1985.

Take notice that Mountain Fuel Resources, Inc. (Mountain Fuel) on July 29, 1985, tendered for filing and acceptance Substitute Second Revised Sheet No. 13, Substitute Second Revised Sheet Nos. 58 through 60 and 62, and Substitute First Revised Sheet Nos. 61 and 63, all to its FERC Gas Tariff, First Revised Volume No. 1.

Mountain Fuel states that through a review of the Schedule A information submitted in its May 1, 1985, PGGA filing, two general adjustments are being made to the forecast of gas costs. The total amount of these adjustments amounts to $3,295,168, and the impact of the adjustments results in a revised Base Cost of Purchased Gas as Adjusted of $2.83359/Dth.

Mountain Fuel states that it is submitting Substitute Second Revised Sheet Nos. 58 through 60 and 62, and First Revised Sheet Nos. 61 and 63, of its FERC Gas Tariff, First Revised Volume No. 1, in accordance with ordering paragraph D of the May 31, 1985, order in this proceeding, 31 FERC ¶61,253 (1985), and to satisfy the Federal Energy Regulatory Commission's concerns over a previously proposed optional adjustment to Mountain Fuel's twelve-month surcharge adjustment. Mountain Fuel states that these tariff sheets also clear up certain ambiguities with regard to compliance by Mountain Fuel with the sub-accounting procedures for Account No. 191 as set forth in the Commission's Uniform System of Accounts.

Mountain Fuel has proposed that the tariff sheets submitted in its filing be made effective June 1, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19650 Filed 8-15-85; 8:45am]

BILLING CODE 6717-01-M

[Docket No. RP85-69-002]

Motion To Place Into Effect Substitute Tariff Sheet; Penn-York Energy Corp.

August 12, 1985.

Take notice that on July 31, 1985, Penn-York Energy Corporation (Penn-York) moved pursuant to section 4(e) of the Natural Gas Act and Section 154.67 of the Commission's Rules and Regulations to place into effect as of August 1, 1985, subject to refund, Substitute First Revised Sheet No. 7 of Second Revised Volume No. 1 of Penn-York's FERC Gas Tariff. The tendered tariff sheet would increase Penn-York's existing rate under Rate Schedule SS-1 from $1.1851 per Mcf to $1.2674 per Mcf of Annual Storage Volume.

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 6, 1985.

The Commission's Order in this proceeding of February 28, 1985 (30 FERC ¶61,223), as modified on April 4, 1985 (31 FERC ¶61,024), accepted for filing, suspended and permitted to become effective August 1, 1985, subject to refund, Penn-York's First Revised Sheet No. 7 of Second Revised Volume No. 1. That tariff sheet provided for a rate under Penn-York's Rate Schedule SS-1 of $1.4460 per Mcf of Annual Storage Volume. By its Motion, Penn-York has submitted a substitute tariff sheet showing a rate under Penn-York's Rate Schedule SS-1 of $1.2674 per Mcf of Annual Storage Volume which reflects exclusion of all costs associated with facilities not in service on July 31, 1985, in accordance with the aforesaid Commission Order.

Penn-York states that a settlement has been reached in principle respecting all issues in this proceeding which will be submitted for Commission approval.

Penn-York further states that copies on the Motion were mailed to each of the Company's jurisdictional customers and interested state commissions, as well as all parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19651 Filed 8-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2207-000]

Lee W. Randall; Filing

August 12, 1985.

The filing Company submits the following:

Take notice that on August 1, 1985, Lee W. Randall (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Vice President, Louisiana Power & Light Company—Public Utililty

Vice President, New Orleans Public Service Inc.—Public Utililty

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19652 Filed 8-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-624-000 and QF85-624-001]

City of San Buenaventura; Application for Commission Certification of Qualifying Status of a Cogeneration Facility and a Small Power Production Facility

August 9, 1985.

On July 22, 1985, City of San Buenaventura, (Applicant) of P.O. Box 99, Ventura, California 93002 submitted for filing an application for certification of a facility as a qualifying cogeneration and small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed combined small power production and topping-cycle cogeneration facility will be located at the Ventura Water Renovation Facility, 1400 Spinnaker Drive, Ventura, California 93001. The facility will consist of 548 kW internal combustion engine generator set. The engine will operate on both natural gas and digester gas. Heat will be recovered from the oil cooler, water cooler, water jacket, exhaust and possibly the turbo-charger after cooler to heat the digesters. The primary fuels for small power production and for cogeneration part of the facility will be digester gas and natural gas respectively. The net electric power production capacity of the facility is 548 kW of which 238 kW is assigned to small power production and 310 kW to cogeneration. The facility is expected to be installed in June, 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-19658 Filed 8-15-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of June 24 Through June 28, 1985

During the week of June 24 through June 28, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

American Federation of Government Employees, 06/25/85, HFA-0295

The American Federation of Government Employees (AFGE) filed an Appeal from a denial by the Inspector General of the Department of Energy of a Request for Information that the AFGE submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the requested document was not in existence and that the request therefore was properly denied.

Natural Resources Defense Council, 06/28/85, HFA-0297

The Natural Resources Defense Council (NRDC), filed an Appeal of a determination issued by the Director, Office of Intelligence Resources and Analysis, Office of the Assistant Secretary for Defense programs of the DOE of a request for information submitted under the Freedom of Information Act. In that determination, the Director denied in part a request for documents concerning the location of nuclear power plants in the Soviet Union. In the Appeal, NRDC questioned the adequacy of the search for responsive documents in light of the fact that only two such documents were identified. In reviewing the matter, the DOE pointed out that a representative of the Director had stated that the reason that only two documents were identified was that the FOIA request had been framed very narrowly. The DOE determined that the search for documents responsive to NRDC's request encompassed serveral DOE offices and that there was no support for the appellant's argument that a thorough sarch had not been performed. Accordingly, the Appeal was denied.

Plumbers and steamfitters Local Union 467, 06/28/85, HFA-0292

The Plumbers and Steamfitters Union Local 467 (Union), filed an Appeal from a determination issued to it by the Authorizing Official of the San Francisco Operations Office of the Department of Energy partially denying the Union's request under the Freedom of Information Act for payroll records of a DOE subcontractor. After searching the DOE record system, the Authorizing Official determined that no responsive documents existed. In considering the Union's Appeal, the DOE found that the scope of the search for the documents was adequate. The Union also appealed the

failure of a contractor to list a subcontractor in performing a federally funded job. The DOE rejected this aspect of the Union's Appeal, finding that the FOIA does not require that particular information be included in a given document. Accordingly, the Appeal was denied.

University of California at Santa Cruz, 06/24/85, HFA-0291

The Stevenson Program on Nuclear Policy at the University of California at Santa Cruz (Program) filed an Appeal from a determination issued to it by the DOE Director of Reference and Information Services. In that determination, the Director denied the Program's request for a waiver of search and copying fees to be charged in connection with the DOE's response to a request for information regarding nuclear safeguards, which the Program filed pursuant to the Freedom of Information Act (FOIA). In considering the Program's Appeal, the DOE determined that the Program should be granted a reduction in search and copying fees because (1) the requested information pertained to a subject of current public interest; (2) the Program had the qualifications and ability to analyze, interpret, and disseminate the requested information; (3) presentation of the requested information in the context of the Program's research project would benefit the free exchange of ideas among policy makers and bring the information into the public domain; and (4) disclosure of the requested information would not serve the personal interests of the requester. The DOE found, however, that the Program did not qualify for a full waiver of search and copying fees because most of the requested material was likely to be exempt from disclosure and might therefore not be informative on the issue found to be in the public interest. Accordingly, the DOE granted the Program a fee waiver reduction of 75%. In addition, the DOE found that the Director's fee estimate of $5,000 included the cost of segregating releasable material from exempt material, which is not an allowable charge under the FOIA regulations. The DOE ordered the Director to recalculate the estimated search and copying fees according to the regulations. Accordingly, the Appeal was granted in part.

Requests for Exception

Busch Distributors, 06/25/85, HEE-0147

Busch Distributors filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the amount of time spent by the firm in completing the form was less than the average time estimated for completing that task. The DOE therefore determined that the firm would not be adversely affected by fulfilling its reporting obligation. Accordingly, exception relief was denied.

Cooper Petroleum, Inc., 06/25/85, HEE-0146

Cooper Petroleum, Inc. filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In responding to Cooper's allegation that its records did not provide the information requested by the form, the DOE pointed out that the instructions to the form specifically permit firms to submit reasonable, estimated data. Consequently, the DOE found that the firm would not be adversely affected by fulfilling its reporting obligation. Accordingly, exception relief was denied.

Spradling's Texaco Petroleum Products, 06/24/85, HEE-0133

Spradling's Texaco Petroleum Products filed an Application for Exception seeking relief from the requirements that it prepare and file Forms EIA-782B, "Reseller/Retailer's Monthly Petroleum Product Sales Report," and EIA-821, "Annual Sales Report of Fuel Oil and Kerosene." In considering the request, the DOE found that there was some merit to the firm's contentions that it was burdened by the requirement that it file EIA-782B. The DOE noted that the firm spent more than six hours per month completing that form, whereas most firms were able to complete the form in approximately two hours. The DOE also found that the reporting requirement imposed a significantly greater burden on Spradling's than on other similar reporting firms due to the nature of Spradling's bookkeeping system and its financial position. After balancing this burden against the public interest in gathering reliable energy data, the determination was made that a limited form of exception relief was appropriate. Accordingly, exception relief was granted to simplify the Form EIA-782B reporting requirements. The DOE further determined that Spradling's did not suffer an inordinate burden in fulfilling its obligation to file Form EIA-821. Accordingly, exception relief regarding that requirement was denied.

Motions for Discovery

Engineered Operating Company J.W. Aiken Economic Regulatory Administration, 06/24/85, HRZ-0241, HRD-0073, HRH-0073, HRZ-0242, HRD-0156, HRH-0156.

The Office of Hearings and Appeals of the Department of Energy issued a decision concerning several motions filed in connection with Statements of Objections to a Proposed Remedial Order (PRO) issued to Engineered Operating Company by the Economic Regulatory Administration. The PRO alleged that Engineered, an operator of crude oil leases, incorrectly classified certain crude oil production. Subsequent to the issuance of the PRO, J.W. Aiken, a previous operator of the leases, was joined as a party to the proceeding. In the decision, the OHA permitted Engineered to file a supplement to its Statement of Objections, noting that the information that the firm wished to submit was brief, comprised documentary evidence directed to allegedly factual issues, and would not delay the proceeding. Consistent with this determination, OHA denied the ERA's Motion to Strike the Supplement from the record. OHA also considered Motions for Discovery filed by Engineered and Aiken, and determined that these motions should be partially granted. Specifically, in order to resolve inconsistencies between the PRO and attached exhibits, OHA directed the ERA to respond to an interrogatory concerning certain overcharges associated with crude oil sales from a particular lease. OHA also found that ERA should produce certain audit workpapers detailing the average daily production rates for the audited leases and those reflecting the posted prices used to calculate the alleged overcharges. Finally, OHA determined that the Motions for Evidentiary Hearing filed by Engineered and Aiken should be denied because the issues identified were legal rather than factual issues.

J.D. Streett & Company, Inc., 06/28/85, HRD-0069, HRH-0069, HRZ-0255.

J.D. Streett & Company, Inc. filed a Motion to Dismiss, a Motion for Discovery and a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order which the Economic Regulatory Administration issued to the firm. In considering these motions, the Office of Hearings and Appeals first determined that the PRO issued to Streett established a prima facie case of violation of the reseller-retailer price regulations. Therefore, OHA found that Streett's Motion to Dismiss the PRO should be denied. OHA granted Streett's request for discovery of any audit workpapers that (i) contain computations of the overcharges alleged in the PRO, and (ii) explain the basis for the margins used by the ERA in calculating Street's maximum lawful selling prices. OHA denied the remainder of Streett's Motion for Discovery. Finally, OHA determined that the firm's Motion for Evidentiary Hearing should be denied except insofar as it pertained to the proper margin used by ERA in computing Streett's maximum lawful selling prices. OHA decided that the issue should be dismissed without prejudice and that Streett should be permitted to file a new Motion for Evidentiary Hearing in accordance with the terms of the Decision and Order.

Request For Temporary Exception

Andi-Co Appliances, Inc., 06/28/85, HEL-0002.

Andi-Co Appliances, Inc. filed an Application for Temporary Exception from the provisions of 10 CFR Part 430, Subpart B, Appendix C with respect to the testing of the energy usage of the AEG model 525 dishwasher. In considering the request, the DOE found that it was impossible for Andi-Co to comply with the applicable testing regulations, since the dishwasher operated at a different water temperature and voltage from those specified in Appendix C. The DOE determined that denial of immediate relief would thwart the public interest by denying consumers the opportunity to purchase a potentially energy-saving dishwasher. Accordingly, temporary exception relief was granted under which Andi-Co was permitted to use alternative testing procedures with respect to 300 units of the model 525 dishwasher during the pendency of the firm's underlying Application for Exception.

Refund Applications

APCO Oil Corporation/May Oil Company, et al., 06/26/85, RF83-3, et al.

The DOE issued a decision granting refunds to 19 purchasers of motor gasoline and/or middle distillates from an escrow account by Apco Oil Corporation, pursuant to

a consent order that the firm entered into with the DOE. The refunds to the 19 firms total $41,959.26, representing $32,963.42 in principal and $8,995.84 in interest. All of the refund applicants had submitted claims for less than the $5,000 threshold, below which a detailed showing of injury is not required.

Bayou State Oil Company/Matthews Oil Company, et al., 06/24/85, RF117-1, et al.

The DOE issued a decision granting refunds to six purchasers of petroleum products from an escrow account funded by Bayou State Oil Company, pursuant to a consent order that the firm entered into with the DOE. The refunds to the six firms total $17,869, representing $12,802 in principal and $5,061 in interest. All of the refund applicants had submitted claims for less than the $5,000 threshold, below which a detailed showing of injury is not required.

J. A. L. Oil Company/S & J Ridgewood Corporation, et al., 06/24/85, RF71-1, et al.

The DOE issued a decision granting refunds to seven purchasers of motor gasoline from an escrow account funded by J. A. L. Oil Company, pursuant to a consent order that the firm entered into with the DOE. The refunds to the seven firms total $8,468.81, representing $5,298.09 in principal and $3,170.72 in interest. All of the refund applicants had submitted claims for less than the $5,000 threshold, below which a detailed showing of injury is not required.

Standard Oil Company (Indiana)/West Virginia, et al., 06/25/85, RM21-5, et al.

The States of West Virginia and New York sought permission to modify their previously-approved refund plans involving the Standard Oil Company (Indiana), Belridge Oil Company and Palo Pinto Oil & Gas refund proceedings. West Virginia sought to change one of the three approved highway routes for the placement of information signs. Since the new route was more frequently traveled than the previous one, the DOE granted the request. New York sought to expand its energy conservation bank funds to include all age groups of low-income recipients. The previously-approved plan limited assistance to low-income individuals who were also senior citizens. The DOE granted New York's request, since a broader class of injured consumers would benefit by the modification.

Dismissals

The following submissions were dismissed:

Name and Case No.

Department of Interior/Glenrock—HEE-0124
Red Diamond Oil Company—HRO-0263, HRW-0025
Rogers Hydrocarbon Corporation—HRO-0294

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 8, 1985.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 85-19653 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 22 Through July 26, 1985

During the week of July 22 through July 26, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Martin M. Young & Associates, 7/26/85, HFA-0300

Martin M. Young & Associates (MMYA) filed an Appeal from a fee waiver denial issued to it by the Freedom of Information Officer at the DOE's Oak Ridge Operations Office. The basis of MMYA's Appeal was that the documents which it requested under the Freedom of Information Act would be used primarily to benefit the general public. However, the DOE concluded that MMYA had failed to show that it would adequately disseminate the requested information. Consequently, MMYA's fee waiver Appeal was denied.

Remedial Orders

Doma Corporation, Don Martin, 7/25/85, HRO-0209

In a Proposed Remedial Order (PRO) issued jointly to Doma Corporation (Doma) and Mr. Don Martin, Doma's president, the Economic Regulatory Administration (ERA) sought to hold Doma and Martin jointly and severally liable for violations of the DOE's pricing and certification regulations. The Respondents denied all of the ERA's substantive allegations. In addition, Martin objected to the agency's claim that he should be held personally liable for the alleged violations committed by Doma.

The OHA determined that the Respondents had violated the certification regulations by purchasing refined petroleum products which they mixed with crude oil and then certified and sold as crude oil, and by selling uncertified barrels of crude oil as new or stripper crude oil. The OHA also determined that the Respondents had violated the applicable pricing regulations by selling crude oil at prices in excess of their maximum legal selling prices.

Furthermore, the OHA held that "an individual corporate officer is liable for all the overcharges resulting from his company's violations of the DOE's regulations, if he both participated in and derived some benefit from any of those violations." The record in the case clearly demonstrated that Martin had actually performed the transactions cited in the PRO as violating the agency's regulations, and that he had derived substantial benefit from those transactions. Accordingly, Martin was held severally liable with Doma for the entire amount of the overcharges.

Energy Reserves Groups, Inc., 7/25/85, BRO-1144

Energy Reserves Group, Inc. objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on February 19, 1980. In the PRO, the ERA found that Energy Reserves, in its sales of the crude oil which it produced, committed violations of the DOE price regulations, resulting in overcharges of $863,781. The DOE therefore concluded that the PRO should be issued as a final Remedial Order. The important issue discussed in the Decision and Order was whether amendments to the price regulations changed the status of uncertified "new" oil to "old" oil for purposes of the cumulative deficiency rule.

Request for Exception

Ed Joyce Fuel & Feeds, 7/25/85, HEE-0143

Ed Joyce Fuel & Feeds filed an Application for Exception in which the firm sought relief from its obligation to file the monthly Form EIA-782B. In considering the request, the DOE found that exception relief was appropriate because the absence of the firm's owner due to medical problems and the accounting changes which would be required to enable the firm to complete the form made the reporting obligation unduly burdensome. Accordingly, exception relief was granted.

Requests for Modification and/or Rescission

Consolidated Materials, Inc. 7/23/85, HRR-0083, HRH-0023

Consolidated Materials, Inc. filed Motions for Reconsideration and for Evidentiary Hearing which relate to a Proposed Remedial Order (PRO) issued to the firm by the Economic Regulatory Administration (ERA) on December 7, 1982. The PRO charges that Consolidated violated the "New Item Rule" at 10 CFR 212.111(b)(3). The PRO also designates Williams Energy Company as a "nearest comparable outlet." As a preliminary matter, the DOE dismissed the Motion for Reconsideration as moot, since it pertained to a previous denial of discovery no longer relevant to the amended PRO. In its Motion for Evidentiary Hearing, the firm requested an evidentiary hearing to allow it to present testimony regarding (i) whether Consolidated and its successor in interest constitute a single firm; (ii) the individual transactions described by the ERA in the PRO; and (iii) Consolidated's and Williams' general characteristics. The DOE denied the first two portions of the firm's motion since those requests did not meet the requirements for evidentiary hearing set forth at 10 CFR 205.199. However, the DOE determined that Consolidated's third request did meet those requirements and that it was appropriate to resolve the disputed factual issues regarding Williams' and Consolidated's general characteristics at an evidentiary hearing.

Accordingly, Consolidated's Motion for Evidentiary Hearing was granted in part.

Crown Central Petroleum Corporation, 7/24/85, HRR-0096

Crown Central Petroleum Corporation filed a Motion for Reconsideration of a previous OHA determination. In the earlier decision the refiner's resubmission of certain cost allocation reports was held to be invalid insofar as those resubmissions attempted to reallocate costs retroactively and make other changes in the refiner pricing formula. At issue were $209,180,698 in disputed increased costs the refiner had attempted to recover in its gasoline sales over a seven year period. OHA denied the Motion for Reconsideration.

Whitaker Oil Compny, 7/23/85, HER-0107

Whitaker Oil Company filed an Application for Modification of a Decision and Order which was issued to the firm on February 22, 1985. *Whitaker Oil Co.*, 12 DOE ¶ 81,024 (1985). That Decision granted the firm's Application for Exception in part, and relieved the firm of the obligation to refund revenues received as a result of overcharges in its sales of motor gasoline. Exception relief was denied with respect to the firm's pricing of other products. In its Application for Modification, Whitaker sought exception relief for its sales of those other products. The DOE dismissed the Application because the firm failed to make a showing of significantly changed circumstances, as required by 10 CFR 205.135(b).

Implementation of Special Refund Procedures

Thompson Oil Co., et al., 7/24/85, HEF-0179, et al.

The DOE issued a Decision and Order establishing special refund procedures for distributing $5,179,933.84, obtained through consent orders entered into with six firms. These firms engaged in diverse operations, including resale of natural gas liquids and refined petroleum products. The DOE found that refunds should be granted to applicants who demonstrate that they made purchases from any of the consent order firms during the period covered by the relevant consent order, and establish that they were injured as a result of those purchases. However, the DOE found that applicants requesting refunds of $5000 or less from any single consent order fund would not be required to provide a separate, detailed showing of injury. The Decision set forth specific information to be included in refund applications.

Refund Applications

Apco Oil Corporation/Little Bear Oil Company, et al., 7/24/85, RF83-56, et al.

The DOE issued a decision granting refunds to 71 purchasers of motor gasoline, middle distillates and/or other products from the Apco Oil Corporation deposit escrow fund. The refunds to these firms total $192,806.48, representing $150,606.38 in principal and $42,290.10 in interest. All of the refund applicants had submitted claims for less than the $5,000-per-claimant threshold, below which injury is presumed.

Gulf Oil Corporation/ D.L. Cheaves Gulf Service, et al., 7/23/85, RF49-00509, et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund filed by retailers of Gulf motor gasoline. The claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. The applicants also indicated that they had purchased motor gasoline directly from Gulf. After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total of $94,019 ($83,117 principal + $10,902 interests) based upon a total volume of 68,129,678 gallons of Gulf purchases.

Gulf Oil Corporation/Galloway's Gulf Service Station, et al., 7/24/85, RF40-01632, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed by retailers of Gulf motor gasoline. The claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. The applicants also indicated that they had purchased motor gasoline directly from Gulf. After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total of $89,476 ($79,098 principal + $10,378 interest) based upon a total volume of 64,834,427 gallons of Gulf purchases.

Gulf Oil Corporation/Hertz Corporation, 7/22/85, RF40-2609

The Hertz Corporation sought a portion of the Gulf Corporation consent order fund based upon settlement of a private claim by Hertz arising out of alleged cost violations by Gulf during the consent order period. The refund procedures allow for consideration of applications of this type, provided the amount of the settlement is approved by the Office of Special Counsel. After verifying that the Application meets the criteria established in the refund procedures, the DOE concluded that Hertz should receive a refund based on the amount of its settlement with Gulf. Accordingly, the Application for Refund was granted.

Gulf Oil Corporation/Joseph Matvya Gulf Service, et al., 7/23/85, RF40-01148, et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed by retailers of Gulf motor gasoline. All of the claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. The applicants also indicated that they had purchased motor gasoline directly from Gulf. After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this decision total $101,402.

Gulf Oil Corporation/Walker Gulf Service, et al., 7/25/85, RF40-01322, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed by retailers of Gulf motor gasoline. All of the claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. The applicants also indicated that they had purchased motor gasoline directly from Gulf. After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this decision total $68,498.

The Hertz Corporation/Adolph Coors Company, United Airlines, 7/23/85, RF76-161, RF76-162

The DOE issued a Decision and Order concerning two Applications for Refund filed by Adolph Coors Co. (Coors) and United Airlines (United) in connection with their purchases of Hertz motor gasoline. A previous Decision and Other had been issued to United in which the firm's refund was incorrectly calculated. This Decision and Order rescinded the refund approved to United and approved a new refund of $2,204. In addition, a $151 refund was approved for Coors.

OKC Corporation/Highway Oil, Inc., 7/26/85, RF13-9

The DOE issued a Decision and Order concerning an Application for Refund filed by Highway Oil, Inc. Highway sought a portion of the settlement fund obtained by the DOE through a consent order entered into with OKC Corporation. Highway is an independent reseller of petroleum products which purchased motor gasoline directly and indirectly from OKC during the period covered by the consent order. Highway submitted certification from its immediate supplier which confirmed Highway's claim that it purchased OKC motor gasoline during the consent order period. The DOE granted Highway's refund request based upon standards established in *Office of Enforcement: In the matter of OKC Corp.*, 9 DOE ¶ 82, 551 (1982). The refund granted Highway totaled $54,218.

Dismissals

The following submissions were dismissed:

Company Name and Case No.

Gulf Oil Corporation—DRO-0194
International Crude Corporation/Gregg Pritchard—HRO-0210
Pacific Lighting Energy Systems—HFA-0302
Whitt's Gulf II—RF40-2298
Whitt's Gulf I—RF40-2299
Wyoming Refining Company—RF21-10704

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available

in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 9, 1985.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 85-19654 Filed 8-15-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2882-7]

Extension of the Public Comment Period on Notice of Intent Not to Regulate Epichlorohydrin

AGENCY: Environmental Protection Agency.

ACTION: Extension of the public comment period.

SUMMARY: This notice announces an extension of the public comment period provided in EPA's Notice of Intent not to specifically regulate epichlorhydrin under the Clean Air Act published on June 11, 1985 (50 FR 24575). That notice announced EPA's intent not to regulate routine emissions of epichlorohydrin based on a preliminary analysis of the available exposure and risk data. In response to the 30-day public comment period provided in the notice, which was scheduled to close on July 11, 1985, a request was submitted for an extension of the public comment period. For this reason the public comment period has been extended for an additional 45 days and will now close on Monday, August 26, 1985.

Dated: August 7, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85-19610 Filed 8-15-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2884-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 29, 1985 through August 2, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-E65035-NC, Rating LO, Croatan and Uwharrie Nat'l Forests, Land and Resource Mgmt. Plan, NC. **SUMMARY:** EPA's review concludes that the proposed alternative is consistent with good environmental practices. EPA lacks objection to the project.

ERP No. D-AFS-J65138-OO, Rating EC2, Custer Nat'l Forest, Land and Resource Mgmt. Plan, SD, ND, and MT. **SUMMARY:** EPA's review found the plan did not provide sufficient information to enable EPA to fully evaluate potential impacts on water quality, or determine if potential salt water spills would be adequately regulated. EPA is concerned because of the lack of specifics addressing the possible impacts of oil and gas development, such as road construction and erosion. Water quality monitoring appears insufficient to evaluate the effectiveness of Best Management Practices (BPM). Although monitoring is proposed, no budget for this purpose is shown.

ERP No. D-AFS-J65139-MT, Rating EC2, Deerlodge Nat'l Forest, Land and Resource Mgmt. Plan, MT. **SUMMARY:** EPA finds there is insufficient information to adequately evaluate air and water quality impacts. The RMP describes water quality monitoring, but details are lacking to determine if the proposal is adequate. No provision is made to fund the monitoring required to verify compliance with water quality standards.

ERP No. D-AFS-L65096-AK, Rating EC2, 1986-90 Alaska Pulp Long-Term Sale Area, Operating Plan, Designation, Tongass Nat'l Forest, AK. **SUMMARY:** The EPA review identified a number of concerns with the sale's impact on water quality. The water quality impacts for each alternative are difficult to compare due to the lack of historical water quality data to form a point of reference for future impacts. EPA is concerned that assuring the best management practices are implemented may not ensure that the Alaska Water Quality Standards are met. The impacts of the sale on wetlands (Sect. 404 Clean Water Act requirements) cannot be adequately assessed based on the information provided in the DEIS. EPA requested additional detailed information on wetland mapping, wetland type, and function and values of wetlands in the study area.

ERP No. DS-COE-E34025-AL, Rating EC2, Frank Jackson State Park Earthfill Dam and Reservoir Construction, 404 Permit, AL. **SUMMARY:** EPA continues to be uncertain that the sacrifice of environmental amenities attendant to facility construction will be sufficiently counterbalanced by societal need. EPA requests an evaluation of all recreational facilities within the Frank Jackson State Park service area, rather than the more restricted perspective (i.e. boating and skiing) used in the DEIS.

ERP No. DS-FHW-D40080-VA, Rating EC2, East-West Expressway Construction, Jefferson Ave. in Newport News to Armistead Ave. in Hampton, VA. **SUMMARY:** EPA completed its review of the DSEIS and identified two major areas, the selection of the preferred alternative and noise impact studies, to be deficient. Both areas were recommended for further study in the FSEIS.

ERP No. D-FHW-H40134-MO, Rating EC2, Rt. 54 Relocation, Rt. 42/134 West to the Grand Glaize Bridge, Acquisition, MO. **SUMMARY:** EPA believes the DEIS does not provide sufficient data or analysis to support the identification of a recommended alternative and recommends the EIS present information, such as traffic counts and the results of local models, for each alternative. EPA recommended the scope of the EIS be expanded to include the overall plan to improve the carrying capacity of US 54 from Osage Beach to Camdenton, Missouri. FHWA was asked to describe the overall plan and define the relationship of the currently proposed action (the DEIS's recommended alternative) to the alternatives of the overall plan. EPA found the DEIS generally subjective and that important issues and conclusions were discussed without presentation of supporting data and EPA suggested the FEIS should be more objective analyses. Sufficient socioeconomic, traffic and safety data should be presented to support the recommended alternative.

ERP No. D-NPS-K61085-OO, Rating EC2, Lake Mead Nat'l Recreation Area, General Mgmt. Plan, Improvement, AZ and NV. **SUMMARY:** The EPA review noted the following concerns with the proposed action: (1) a lack of provision for adequately protecting water quality and public health by reducing the amount of human waste entering shoreline waters; (2) inadequate treatment of CWA Sect. 404 requirements for protecting riparian and wetland areas during construction and operation; and (3) impacts of construction of roads, docks, and flood control structures on water quality, including fish spawning areas.

Final EISs

ERP No. F-BIA-G08009-NM, Norton-Tesuque 115 kV Overhead,

Transmission Line and Substation, Right-of-Way Permit and Approval, NM. **SUMMARY:** The FEIS adequately responded to EPA comments issued on the DEIS. EPA has not identified any new issues of concern with regard to the proposed action.

ERP No. FA–COE–E32022–NC, Manteo (Shallowbag) Bay Project, Dredging, Design, Oregon Inlet, NC. **SUMMARY:** EPA continues to believe that the magnitude and kind of marine processes experienced by the Outer Banks will limit the effectiveness of the proposed structures, and/or result in an acute failure of the facility.

ERP No. F–MMS–K03013–CA, Pt. Pedernales Field Offshore Oil and Gas OCS Development Projects, Approval, Central Santa Maria Basin Area Study, CA. **SUMMARY:** EPA emphasized two principal areas of concern for the FEIS. EPA noted that it was critical for adequate enforceable mitigation measures to be adopted by the Minerals Management Service. EPA considers this necessary so that onshore ozone violations will not occur. Also, EPA commented that future discussions are needed regarding future onshore air quality impacts resulting from cumulative OCS related emissions.

Regulations

ERP No. R–UPS–A86219–OO, 39 CFR Pts. 775 and 776, Floodplain Mgmt. and Protection of Wetlands, Amendments to Environmental Procedures. **SUMMARY:** EPA has no objection to the proposed amendments.

Dated: August 13, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–19584 Filed 8–15–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2883–9]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed August 5, 1985 through August 9, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850334, Draft, COE, HI, Kahawainui Stream Flood Damage Reduction Plan, Honolulu County, Due: September 30, 1985, Contact: James Maragos (808) 438–2263.

EIS No. 850335, Final, AFS, SC, Sumter National Forest, Land and Resource Management Plan, Due: September 16, 1985, Contact: Donald Eng (803) 765–5222.

EIS No. 580336, Final, BLM, WA, Spokane District Resource Management Plan, Due: September 16, 1985, Contact: Joseph Buesing (509) 456–2570.

EIS No. 850337, DSuppl, FHW, VA, Springfield Bypass and Extension, Construction, I–66 to the Braddock Road/VA–620 Intersection, Cannon Ridge Alternative, Fairfax County, Due: September 30, 1985, Contact: James Tumlin (804) 771–2371.

EIS No. 850338, Final, FHW, CA, CA–55/Newport Boulevard Improvement, US 1/Pacific Coast Highway to US 73/Corona Del Mar Freeway, Orange County, Due: September 16, 1985, Contact: Glenn Clinton (916) 440–3578.

EIS No. 850339, Draft, BLM, NV, Elko Resource Area, Resource Management Plan and Wilderness Designation Study, Elko, Lander and Eureka Counties, Due: November 15, 1985, Contact: Rodney Harris (702) 738–4071.

EIS No. 850340, Final, FHW, OR, SW 257th Avenue Extension, I–84 to Stark Street, Construction, Modified Build Alternatives, Right-of-Way Acquisition, Multnomah County, Due: September 16, 1985, Contact: Dale Wilken (503) 399–5749.

EIS No. 850341, Final, FHW, CA, I–5/Santa Ana Freeway and CA–55/Newport-Costa Mesa Freeway Improvements, I–5 and I–55 Interchange Reconstruction, CA–22 to I–405, Orange County, Due: September 16, 1985, Contact: Glen Clinton (916) 440–3578.

EIS No. 850342, Draft, CDB, NY, Pierrepont Street Office Development, Construction, UDAG, Kings County, Due: September 30, 1985, Contact: Mira Ledman (212) 669–8930.

EIS No. 850343, FSuppl, COE, KY, Yatesville Lake Multipurpose and Local Protection Project, Lawrence County, Due: September 16, 1985, Contact: John Justice (304) 529–5712.

EIS No. 850344, DSuppl, COE, OR, WA, Bonneville Lock and Dam Navigation Development and Disposal Plan, Construction, Due: September 30, 1985, Contact: Eric Braun (503) 221–6096.

Amended Notices

EIS No. 850213, Draft, AFS, NM, Gila National Forest, Land and Resource Management Plan, Due: October 8, 1985, Published FR 5–31–85—Review extended.

EIS No. 850214, Draft, COE, FL, Occidental Wetland Phosphate Mining Operations, Dredge and Fill Permit, Hamilton County, Due: August 19, 1985, Published FR 5–31–85—Review extended:

Dated: August 16, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–19583 Filed 8–15–85; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL–288 2–4]

Report to Congress Required by Section 3007(e)(2) of the Resource Conservation Recovery Act (RCRA)

AGENCY: Environmenal Protection Agency.

ACTION: Request for comment.

SUMMARY: Section 3007(e)(2) of the Resource Conservation and Recovery Act (the Act) as amended requires that the Administrator of the Environmental Protection Agency submit a report to Congress on the potential for inspections of hazardous waste treatment, storage, and disposal facilities by nongovernmental inspectors as a supplement to governmental inspections. EPA is seeking comments on any information relating to this report and in particular the issues raised in this notice.

DATE: Comments must be submitted on or before September 16, 1985.

ADDRESS: Comments may be mailed to Jackie Tenusak, Office of Waste Programs Enforcement (WH–527), U.S. Environmental Protection Agency, 401 M Street, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jackie Tenusak, Office of Waste Programs Enforcement (WH–527), U.S. Enivronmental Protection Agency, 401 M Street SW., Washington D.C. 20460, (202) 475–8729.

SUPPLEMENTARY INFORMATION:

Background

Regulatory inspections of treatment, storage, and disposal facilities are a necessary element of an effective hazardous waste control program. Officers, employees and representatives of the States and EPA are authorized by section 3007(a) of the Act to enter and inspect any facility where hazardous waste is being handled. The 1984 amendments to the Act add a new subsection (e) to section 3007, requiring inspections at least every two years at all treatment, storage, and disposal facilities for which a permit is required under section 3005. The purpose of this amendment is to ensure periodic inspections of these facilities. The hazardous waste inspection program

must also ensure that owners and operators of hazardous waste facilities comply with the strengthened requirements, as well as the standards already in place prior to the amendments. The Agency has been exploring the possibility of using private inspection services and those insurance companies that offer liability insurance to supplement the inspection program. The report will include a discussion of funding mechanisms for inspections, such as fee systems, and will explore questions of confidentiality and possible conflicts of interest were the agency to authorize the use of nongovernmental inspectors. The report to Congress may contain recommendations for legislation or regulations if necessary to implement the recommended alternative(s).

EPA has an incentive to consider the use of private inspection firms to supplement the present inspection program because the RCRA regulations are wide-ranging and the inspection requirements are diverse and extensive. Therefore, expertise in a variety of areas is necessary to fully monitor compliance with the requirements. Private inspection firms may be able to provide specialized skills when such skills are needed to determine whether a member of the regulated community is in compliance.

The Agency notes that private companies have performed functions which are similar though not identical to the role of a government inspector. In particular, many firms have auditing programs that evaluate and attempt to ensure that their facilities are managed efficiently and in compliance with environmental requirements. Insurance companies may also perform risk assessments to determine whether the site is managed in an environmentally sound manner before issuing the liability coverage required of RCRA facilities. Thus, there is considerable expertise in the private sector that might be useful toward inspections pursuant to section 3007(e).

However, if EPA and state agencies use private inspectors to supplement inspections by regulatory officials, then EPA and Congress must be assured that such private action will present objective, unbiased results and that private inspectors would not present potential confidentiality or confict of interest problems.

Request For Comments

The Agency has not yet determined whether private inspectors may supplement its inspection program, or the role of such inspectors if an affirmative decision is made. This notice summarizes obtained from representatives from the insurance industry, private inspection firms, states, environmental groups and industry. EPA is seeking additional comment on the issues and options presented here and other suggestions or recommendations regarding the use of private inspectors as a supplement to the current inspection program.

The following are questions that the Agency has about private inspection companies and the role they could play in the hazardous waste inspection program.

1. Will there be a conflict of interest if a private inspection firm receives its funding from the company whose facility is the object of inspection, or would the private inspection firm's credibility with the regulatory agency ensure that this would not be a problem?

2. Should the owner or operator of the facility be able to choose the inspection firm?

3. Are there conflict of interest or confidentiality problems when an inspection firm inspects a facility in lieu of governmental inspectors and also serves the owner or operator of that facility in other capacities such as performing inspections for insurance purposes, performing environmental audits, or general environmental counseling?

4. Can EPA count on the cooperation of a private inspection firm after the inspection through any possible enforcement actions?

The following are options that have been suggested to the Agency for the role private inspection firms could play in the hazardous waste program.

A. Private inspectors could be used for a program that EPA is just starting, such as the program for underground storage tanks, because EPA may not have enough trained personnel when the program starts.

B. Private inspectors could be used in highly technical areas, such as groundwater monitoring and financial responsibility reviews, because there may not be personnel available with the specific skills required to perform these inspections.

C. The private inspection firm could provide preliminary or supplemental inspections. It could perform certain specified portions of the inspections (i.e. paperwork review, company file reviews, site reviews related to determination of functioning safety equipment, etc.) prior to the regulatory agency's visit. This would allow the official agency team to concentrate its efforts and limited resources on the more complex aspects of the inspection.

D. EPA could encourage or mandate laboratory certification (which could be done by a private inspection firm) of all regional and state laboratories or any laboratory that would conduct analyses for RCRA purposes.

E. EPA could explore the possibility of a private inspection firm certifying that compliance information submitted by a regulated facility is accurate and fulfills the agency's requirements. Examples of areas where this might work are groundwater data and financial responsibility requirements.

F. A private inspection team could act as a surrogate for official inspection teams, performing all aspects of the inspections, based on the appropriate requirements, and report the results to the appropriate regulatory authorities for official action. Official action could include enforcement, certification of compliance, regulatory follow-up, etc. As part of this approach, the regulatory authority could maintain its own limited inspection team(s) for quality control audits of the private team's work and for enforcement-related follow-up in special cases. The private inspection team could receive payment either from the company receiving the service, or from the responsible regulatory agency mandating the inspection.

G. Many large firms can afford an internal auditing program that measures that their facility will be managed efficiently and be in compliance with environmental requirements. Many medium and small size firms use private inspection services to audit their facilities because they cannot afford a regular in-house auditing program. When certifying private inspection firms, EPA could also certify firms which perform environmental audits. This type of a certification program might encourage small and medium size firms to initiate environmental auditing programs. There are two approaches EPA can take: (1) Develop standards for certification; or (2) use EPA resources to provide training and certification.

H. In conjunction with a program including nongovernmental inspectors, EPA or the states could charge fees to support inspections, either through an inspection charge or an annual permit fee, to provide additional resources to government agencies. While a fee system will generate additional revenues, it must be noted that industry already pays for state inspection through taxes.

Dated: August 8, 1985.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 19426 Filed 8-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0041
Title: Verification of Income for Occupants of Temporary Housing

Abstract: The information is used to support determinations regarding appropriate forms of continued assistance for occupants of temporary housing provided under Section 404. The form is required to verify income only when the occupant does not possess a verification document, such as an earnings statement.

Type of respondents: Individuals or Households
Number of respondents: 500
Burden hours: 42

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, S.W., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 9, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85–19524 Filed 8–15–85; 8:45 am]

BILLING CODE 6718–01–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0048
Title: Insurance Commitment
Abstract: Form is used to document statutory compliance with law to obtain and maintain insurance.
Type of Respondents: State or Local Governments Non-Profit Institutions.
Number of Respondents: 100.
Burden Hours: 200.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, S.W., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 9, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85–19523 Filed 8–15–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010798.
Title: Galveston Terminal Agreement.
Parties:
The Board of Trustees of the Galveston Wharves (Galveston Wharves)
Container Terminal of Galveston, Inc. (Container Terminal)

Synopsis: The agreement provides for the management and operation of the Galveston Wharves' East End Container Terminal by Container Terminal. The terminal will be operated as a public marine container terminal subject to the provisions and charges published in the Board of Trustees of the Galveston Wharves' Container Terminal Tariff No. 1–B, FMC–T No. 12. The initial term of the agreement is for a period of one month with an option for a one month extension. The parties have requested a shortened review period for the agreement.

Agreement No.: 217–010801.
Title: Westwood Transpacific Service/Canadian Transport Company Space Charter Agreement.
Parties:
Westwood Transpacific Service
Canadian Transport Company

Synopsis: The proposed agreement would permit Canadian Transport company to charter vessel space to Westwood Transpacfic Service in the trade from ports in the Japan/Korea range to ports on the West Coast of the United States for cargo moving between such ports to inland destinations under Westwood Transpacific Service's international bills of lading and intermodal rates.

Agreement No.: 224–010802.
Title: Long Beach Terminal Agreement.
Parties:
Salen Shipping Agencies, Inc. (Salen)
City of Long Beach (City)

Synopsis: The agreement provides for the preferential assignment by the City of Salen of terminal facilities at Berths 1 and 2, Pier A, within the Long Beach Harbor District in the Port of Long Beach. Salen will use the premises to conduct a marine terminal operation including all related activities thereto. Salen will pay to the City compensation as provided for in Terminal Tariff No. 4 for the first 150,000 metric revenue tons of merchandise, and fifty percent of the tariff wharfage charges on amounts in excess of 150,000 metric tons. Salen shall also collect dockage charges in accordance with the agreement, remitting seventy-five percent of the amount collected to the City. Salen shall be entitled to retain the remaining twenty-five percent of dockage charges. The term of the agreement shall be for a period of two years with an option to extend the term for two additional periods of two years each.

Agreement No.: 224–010803.
Title: Port Royal Terminal Agreement.
Parties:
South Carolina State Ports Authority (Authority)
Port Royal, Inc. (Port Royal)

Synopsis: Agreement No. 224–010803 provides that Port Royal, Inc., will be the marine terminal operator for State Pier 21 at Port Royal, South Carolina. They will operate the pier as an export and import, intercoastal and ocean freight terminal. Port Royal will pay to the Authority a fixed monthly license fee based on monthly tonnage. Wharfage, dockage, and handling cargo rates will be those contained in the South Carolina State Ports Authority Terminal Tariff No. 1–B. The term of the agreement will

for five years with two consecutive five-year option terms available.

Agreement No.: 221-010804.

Title: Los Angeles Terminal Agreement (Premises).

Parties:

The City of Los Angeles, by its Board of Harbor Commissioners (City)

Evergreen Marine Corporation (Taiwan) Ltd.

Synopsis: Agreement No. 221-010804 entitles Evergreen to receive wharfage credit from the City in the amount of $275,000, against terminal generated revenue from the cost of construction of certain improvements made by Evergreen at Berths 233-236 in the Port of Los Angeles. Under Agreement No. T-4087 Evergreen has been granted preferential use of Berths 233-236. Evergreen shall not be obligated to pay any wharfage charges to the City until the full amount of the credit is used. The term of the agreement shall terminate when all wharfage credit has been used, but in no event shall it extend beyond five years from its effective date.

Dated: August 13, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc 85-19643 Filed 8-15-85; 8:45 am]

BILLING CODE 6730-01-M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on August 6, 1985, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201-002631-006.

Title: New Orleans Assessment Agreement.

Parties: Members of the New Orleans Steamship Association (NOSSA).

Synopsis: Agreement No. 201-002631-006 amends the basic agreement between the members of NOSSA, which covers the Guaranteed Annual Income Plan Agreement and Declaration of Trust. This amendment was adopted in accordance with the provisions of Article 16 of the NOSSA agreement. The purpose of the amendment is to change the funding formula in Article 3 of the agreement.

Dated: August 13, 1985.

By Order of the Federal Maritime Commission

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-19627 Filed 8-15-85; 8:45 am]

BILLING CODE6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 9, 1985.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Proposal to approve under OMB delegated authority the extension without revision of the following reports:

1. Report title: Survey of Terms of Bank Lending (STBL)

Agency form number: FR 2028A, 2028A-S, 2028B

OMB Docket number: 7100-0061

Frequency: Quarterly

Reporters: Commercial banks

Small businesses are affected.

General description of report: This information collection is voluntary 12 U.S.C. 248(a)(2) and is given confidential treatment 5 U.S.C. 552(b)(4).

The STBL collects information on interest rates, including the prime rate, and selected nonprice terms of lending on individual loans to business and farmers from a sample of insured commercial banks.

Board of Governors of the Federal Reserve System, August 9, 1985.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 85-19573 Filed 8-15-85; 8:45 am]

BILLING CODE 6210-01-M

First Leesport Bancorp, Inc. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for insepction at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 9, 1985.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Leesport Bancorp, Inc.*, Leesport, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Leesport, Leesport, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Indiana National Corporation*, Indianapolis, Indiana; to acquire 32 percent or more of the voting shares of Lafayette National Corporation, Lafayette, Indiana, thereby indirectly acquiring Lafayette National Bank, Lafayette, Indiana.

2. *Pinnacle Bancshares, Inc.*, Paw Paw, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Paw Paw, Paw Paw, Illinois.

Board of Governors of the Federal Reserve System, August 12, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19574 Filed 8-15-85; 8:45 am]

BILLING CODE 6210-01-M

Hudson Financial Associates et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies, and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulatory Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hudson Financial Associates,* Wayne, New Jersey; to become a bank holding company by acquiring 24.9 percent of the voting shares of Hubco, Inc., Union City, New Jersey, thereby indirectly acquiring Hudson United Bank.

Applicant has also applied to acquire Hub Leaservice, Union City, New Jersey and Hub Financial Services, Inc., Union City, New Jersey, thereby engaging in leasing of personal property and providing access to data processing services and facilities and will acquire proprietary rights and soft-ware program. These activities are to be to be conducted in the New Jersey and metropolitan New Yrok areas.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Wachovia Corporation,* Winston-Salem, North Carolina; to become a bank holding comapny by acquiring Wachovia Corporation, Winston-Salem, North Carolina and First Atlanta Corporation, Atlanta, Georgia, thereby indirectly acquiring Wachovia Bank and Trust Company, N.A., Winston-Salem, North Carolina; The First National Bank of Atlanta, Atlanta, Georgia; The First National Bank of Dalton, Dalton, Georgia; and First Bank of Savannah, Savannah, Georgia.

Applicant has also applied to acquire the following companies and thereby engage in the listed activities; Wachovia Mortgage Company, Winston-Salem, North Carolina (origination and processing of residential mortgage and construction loans; purchase and sale or placement of mortgage loans; administration and servicing of mortgage loans; management and sale of properties acquired through foreclosure or transfers in lieu of foreclosure; sale, as agent, of credit life, hospital, disability and accident and health insurance; sale, as agent, of property and casualty insurance directly related to extensions of credit. The insurance activities are permissible pursuant to section 4(c)(8)(A) and (D) of the Act. Applicant does not propose any expansion in the geographic scope of these activities.); Wachovia Services, Inc., Winston-Salem, North Carolina (data processing, investment advice and loan servicing activities with respect to student loans; acquiring and servicing student loans for the account of others including but not limited to state or other governmental authorities; acting as investment or financial advisor to state and governmental authorities and other entities in connection with the acquisition and servicing of student loans; providing data processing services in connection with the acquisition and servicing of student loans for state and governmental authorities and other entities); Financial Life Insurance Company of Georgia, Atlanta, Georgia (underwriting, as reinsurer, of life and accident, and health insurance which is directly related to extensions of credit by First Atlanta and its subsidiaries pursuant to section 4(c)(8)(A) of the Act); First Atlanta Leasing Company, Atlanta, Georgia (hold leases acquired from other First Atlanta subsidiaries); First Atlanta Mortgage Corporation, Atlanta, Georgia (administrating and servicing of mortgage loans; origination and placement of residential and commercial permanent real estate loans; sale, as agent, of property damage and liability insurance with respect to extensions of credit. The insurance activities are permissible pursuant to section 4(c)(8)(D) of the Act. Applicant does not propose any expansion in the geographic scope of this activity); and Tharpe & Brooks of Florida, Atlanta, Georgia (making loans secured by real estate and servicing loans).

Board of Governors of the Federal Reserve System, August 12, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19575 Filed 8-15-85; 8:45 am]

BILLING CODE 6210-01-M

North Georgia Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 1985.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *North Georgia Bancshares, Inc.*, Canton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of North Georgia Savings & Loan Association, Inc., Canton, Georgia (to be converted to a state member bank, North Georgia Bank).

Applicant has also applied to acquire N.G.B.S. Investments, Inc., Canton, Georgia, thereby engaging in general insurance activities in a place with a population not exceeding 5,000, pursuant to section 4(c)(8)(C)(i) of the Act. These activities are to be conducted in Canton and Woodstock, Georgia.

Board of Governors of the Federal Reserve System, August 12, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19576 Filed 8-15-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 9, 1985.

Public Health Service

Food and Drug Administration

Subject: Investigational Device Exemption Reports and Records—Extension (0910-0078)
Respondents: Businesses or other for-profit institutions, small businesses or organizations
Subject: Labeling for Weight Control Food—Existing Collection
Respondents: Businesses or other for-profit, small businesses or organizations
Subject: Food Additives—Revision (0910-0016)
Respondents: Businesses or other for-profit institutions
Subject: Color Additive Petitions—Revision (0910-0185)
Respondents: Businesses or other for-profit institutions, small businesses or organizations
OMB Desk Officer: Bruce Artim

Social Security Administration

Subject: Statement Regarding Contributions—SSA-783—Extension (0960-0020)
Respondents: Individuals
Subject: Electronic Wage Reporting Questionnaire—SSA-1831—New
Respondents: Businesses or other for-profit institutions, small businesses or organizations.
Subject: Application for Benefits Under the Federal Mine Safety and Health Act of 1977, As Amended (Widow's Claim, Child's Claim, Dependent's Claim)—SSA-47, 48 and 49—Extension (0960-0118)
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Health Care Finance Administration

Subject: Attending Physician's Statement and Documentation of Medicare Emergency—HCFA-1771—Extension (0938-0023)
Respondents: Physicians
Subject: Hospital Survey Report Form—HCFA-1537—Extension (0938-0382)
Respondents: State/local governments
Subject: Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program—HCFA-64—Revision (0938-0067)
Respondents: State/local governments
Subject: End Stage Renal Disease Facility Survey—HCFA-2744—Reinstatement (0938-0064)
Respondents: Designated transplant centers
Subject: End Stage Renal Disease Death Notification—HCFA-2746—Reinstatement
Respondents: Designated transplant centers
Subject: End Stage Renal Disease Transplant Information—HCFA-2745—Reinstatement
Respondents: Designated transplant centers
Subject: Recipient Use and Expenditures for Medicaid Enrolles Covered Under Section 1619 (a) and (b) of the Social Security Act—HCFA-498—New
Respondents: State/local governments
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: August 12, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-19569 Filed 8-15-85; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Open Meetings; Modification of NIOSH Recommendations for Calculation of Permissible Load Limits for Repetitive Lifting Tasks, and Pulmonary Hypersensitivity of Industrial Agents

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease

Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Modification of NIOSH Recommendations for Calculation of Permissible Load Limits for Repetitive Lifting Tasks

Date: September 10, 1985
Time: 2 p.m.-5:30 p.m.
Place: Writing Room #3, Nittany Lion Inn, North Atherton Street, State College, Pennsylvania 16802
Purpose: To review procedures for calculation of action limits and maximum permissible limits for tasks involving repetitive lifting; and, if warranted, to develop alternate procedures for performing these calculations.
Additional information may be obtained from: Donald W. Badger, Ph.D., Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8286, Commercial: 513/533-8286

Pulmonary Hypersensitivity of Industrial Agents

Date: September 27, 1985
Time: 9 a.m.—3 p.m.
Place: Room B-85, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226
Purpose: To review and discuss the scientific merit of an experimental investigation of the asthmogenic potential of vanadium pentoxide inhalation.
Additional information may be obtained from: Edwin A. Knecht, Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8275, Commercial: (513) 533-8275

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: August 12, 1985.

Elvin Hilyer,

Associate Director of Policy Coordination, Centers for Disease Control.

[FR Doc. 85-19513 Filed 8-15-85; 8:45 am]

BILLING CODE 4160-18-M

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control Cancer Control Science Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Control Science Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 18, 1985, Building 31, First Floor, A-Wing, Conference Room 2, 9000 Rockville Pike, Bethesda, Maryland 20205. The entire meeting will be open to the public from 7:00 p.m. to 9:00 p.m., and the current and future programs of the Cancer Control Science Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20205 (301/427-8630) will furnish substantive program information.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-19538 Filed 8-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control Centers and Community Oncology Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Centers and Community Oncology Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, September 5, 1985, Building 31, Room 2A52, 9000 Rockville Pike, Bethesda, Maryland 20205. The entire meeting will be open to the public from 8:30 a.m. to adjournment, and the current and future programs of the Centers and Community Oncology Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20205 (301/427-8630) will furnish substantive program information.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 19539 Filed 8-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, September 26-27, 1985, Building 31, Conference Room 8, National Institutes of Health which was published in the **Federal Register** on July 29, (50 FR 30763).

The committee was to have convened at 8:30 am. on September 26; however, it has been changed to 8:30 a.m. on October 31 and November 1, 1985, Building 31, Conference Room 8, as the previous date would constitute a conflict of schedule for the acting executive secretary.

The meeting will be open to the public from 8:30 a.m. to 9:00 a.m. on October 31, 1985 and will be closed from 9:00 a.m. to recess. The meeting will also be closed on November 1, 1985 from 8:30 a.m. until adjournment for the review of grant applications.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-19540 Filed 8-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Treatment; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, October 3-4, 1985, Building 31, 6th Floor, "C" Wing, Conference Room 10, Bethesda, Maryland 20205. This meeting will be open to the public on October 3, 1985, from 8:30 a.m. until 5:45 p.m., and again on October 4, 1985, from 8:30 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be a scientific review by one of the programs in the Division. Attendance by

the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A-06, National Institutes of Health, Bethesda, Maryland 20205 (301-496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A-52, National Institutes of Health, Bethesda, Maryland 20205 (301-496-4291) will furnish substantive program information.

Dated: August 9, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-19541 Filed 8-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 28-29, 1985, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The Committee will meet in Building 31, Conference Room 9, C Wing.

The entire meeting will be open to the public from 9:00 AM to 5:00 PM on October 28, and from 9:00 AM to adjournment on October 29, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 9, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-19542 Filed 8-15-85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Cardiology Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, October 28-29, 1985, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 8:00 a.m. on October 28 to adjournment on October 29. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20205, telephone (301) 496-4236, will provide summaries of the meeting and rosters of the Committee members.

Eugene R. Passamani, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20205, telephone (301) 496-5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: August 9, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-19543 Filed 8-15-85; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Meeting; Coordination Maintenance and Committee

Notice is hereby given that the ICD-9-CM Coordination and Maintenance Committee will convene on Thursday, September 19 and Friday, September 20, 1985 from 9:00 a.m. to 5:00 p.m. both days in Room 303A-305A of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is Co-Chaired by the National Center for Health Statistics and the Health Care Financing Administration. This first meeting of the Committee will be devoted to organizational details, identification of functions and scope, and planning for future quarterly meetings.

For further information, contact Ms. Sue Meads, Co-Chairperson, National Center for Health Statistics, Room 2-19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7019.

Dated: August 8, 1985.

Manning Feinleib, M.D., Dr.P.H.,

Director, National Center for Health Statistics.

[FR Doc. 85-19570 Filed 8-15-85; 8:45 am]

BILLING CODE 4160-17-M

Meeting; National Committee on Vital and Health Statistics

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Statistical Aspects of Physician Payment Systems established pursuant to 42 USC 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Tuesday, September 10, 1985 from 9:30 a.m. to 5:00 p.m. in Room 405-A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will continue to hear presentations from public and private insurers on the ambulatory care data flow for the patient-physician encounter in their respective programs or organizations and from other users of ambulatory care data.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Marjorie Greenberg, National Center for Health Statistics, Room 2-26, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7122.

Dated: August 8, 1985.

Manning Feinleib, M.D., Dr. P.H.,

Director, National Center for Health Statistics.

[FR Doc. 85-19571 Filed 8-15-85; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Proposed Exchange of Public Lands; Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Exchange of Public Lands in Riverside County.

SUMMARY: The following described public lands are determined to be suitable for disposal by exchange under the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 5 S., R. 22 E.,
Sec. 15: that portion of the SE¼ west of Midland Road;
Sec. 21: S½;
Sec. 22: all west of Midland Road;
Sec. 23: all west of Midland Road;
Sec. 25: that portion of the N½S½ west of Midland Road;
Sec. 26: N½;
Sec. 27: N½SW¼;
Sec. 28: S½.

In exchange for these lands, the Federal Government may acquire an equal value of lands owned by the Nature Conservancy within the boundaries of the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and state listed as endangered. The Bureau of Land Mangement's ultimate goal is to acquire approximately 6700 acres of land within the preserve. Other state and federal agencies will acquire the remaining portions of the preserve.

Acquisition of lands within the preserve follows recommendations in the Draft Coachella Valley Fringe-toed Lizard Habitat Conservation Plan (1984).

The purpose of this notice is to segregate the subject public lands from nuisance applications and entries while the above proposal is being evaluated. An appraisal has not been done. A survey may be required to lot out those lands lying adjacent to Midland Road.

Lands to transferred from the United States will be subject to the following reservations, terms, and conditions:

1. The reservation to the United States of a right-of-way for ditches and canals constructed under the authority of the Act of August 30, 1890 (43 U.S.C. 945).

2. An oil and gas lease granted by the United States to Natural Resources Corporation, its successor and assigns, by lease CA–9570 under the authority of the Act of February 25, 1920 (30 U.S.C. 181).

3. An existing electric powerline right-of-way granted by the United States to SRN Pacific Communications Company, its successors and assigns, by right-of-way grant CA–13526 under the authority of the Act of October 21, 1976 (43 U.S.C. 1761).

4. An existing right-of-way for railroad purposes granted from the United States to California Southern Railroad Company, its successors and assigns, by right-of-way grant LA–028991 under the authority of the Act of March 3, 1875 (43 U.S.C. 934–939).

5. An existing transmission right-of-way granted from the United States to Southern California Edison Company, its successors and assigns by right-of-way grant LA–0123107 under the authority of the Act of March 4, 1911 (43 U.S.C. 961).

Upon publication of this Notice of Realty Action in the **Federal Register**, the public lands will be segregated from all appropriations under the public land laws and the mining laws, except for mineral leasing, for a period of two (2) years or upon issuance of patent or other conveyance document. Information concerning the exchange proposal, including the Feasibility Report evaluating the effect of acquiring a portion of the proposed fringe-toed lizard preserve, is available for review at the California Desert District Office, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, at the above address. Objections will be reviewed by the State Director, Bureau of Land Management, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: August 7, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 85–19560 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–40–M

Utah Combined District Advisory Board Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a joint meeting of Utah District Grazing Boards will be held September 10 and 11, 1985. The meeting will begin with a field tour of the Randolph Stewardship Area. The tour will depart at the Dunmar Motel west entrance, Highway 30, Evanston, Wyoming at 7:00 a.m. on September 10.

A business meeting will be held at 8:30 a.m. on September 11 at the Dunmar Motel. The agenda for this meeting will include:

1. An update on current rangeland policy.
2. Noxious weed infestations.
3. Update on grasshopper control efforts.
4. Other insect infestation problems.
5. Report of the individual Advisory Board on Range Improvement activities.
6. Other items of interest.

The meeting is open to the public. Interested persons must furnish their own transportation. Anyone wishing to participate or present a statement should notify the Public Affairs Office, Utah State Office, 324 South State Street, Suite 301, or telephone 801–524–3146 by September 6, 1985.

FOR FURTHER INFORMATION: For additional information contact Ken Boyer, Range Conservationist, BLM State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111, (801–524–3121).

Dated: August 9, 1985.

Jim Moorhouse,

Acting State Director.

[FR Doc. 85–19514 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–84–M

[ORE 09947, ORE 010418]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration proposes that two land withdrawals for the Redmond and John Day Air Navigation Sites continue for an additional 20 years. The lands would remain closed to surface entry and mining. Of the total 284.88 acres involved, 164.88 acres are already open and 120 acres would be opened to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration proposes that the existing land withdrawals made by Public Land Order No. 2141 of June 30, 1960, and Public Land Order No. 3076 of May 7, 1963, be

continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved include two parcels of land: one containing 120 acres located seven miles west of Redmond in Section 21, T. 15 S., R. 12 E., W.M., Deschutes County, Oregon, and the other containing 164.88 acres located 22 miles east of Mitchell in Section 3, T. 11 S., R. 25 E., W.M., Wheeler County, Oregon.

The purpose of the withdrawals is to protect the Redmond and John Day Very High Frequency Omnirange and Tactical Air Navigation (VORTAC) facilities. The withdrawal segregates the lands from operation of the public land laws generally, including the mining laws, and 120 acres from operation of the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal except to open 120 acres so that the entire 284.88 acres are open to applications and offers under the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-19566 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 37063 (WASH)]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bonneville Power Administration proposes that a portion of the land withdrawal for the Moxee Substation continue for an indefinite period. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy, Bonneville Power Administration, proposes that a portion of the existing land withdrawal made by the Secretarial Order of January 28, 1910, be contined for an indefinite period pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located approximately four miles east of Yakima and contains 12.31 acres within Section 24, T. 13 N., R. 19 E., W.M., Yakima County, Washington.

The purpose of the withdrawals is to protect the Bonneville Power Administration Moxee Substation. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-19567 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-33-M

[OR 33199 (WASH)]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that a land withdrawal for the Columbia River at the Mouth Project continue for an additional 100 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Department of the Army, Corps of Engineers, proposes that the existing land withdrawal made by the Executive Order of February 26, 1952, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located at Cape Disappointment near the mouth of the Columbia River and contains approximately 921.90 acres within Sections 8 and 9, T. 9 N., R. 11 W., W.M., Pacific County, Washington.

The purpose of the withdrawal is to protect Corps of Engineers Columbia River at the Mouth Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 9, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations

[FR Doc. 85-19568 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-33-M

Competitive Sales of Public Lands in San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action. Competitive Sales of Public Lands in San Bernardino County, California.

SUMMARY: The public lands described in this notice have been examined and found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713). Sale will be by sealed bid. In no case shall lands be sold for less than the appraised market value. The following public lands will be offered for sale at 10 a.m., October 8, 1985 in the Baker Community Hall, located on Baker Avenue, Baker, California. Unsold parcels may be reoffered for sale through a subsequent Notice of Realty Action.

Parcel No.	Serial No.	Legal Description	Acres	Appraised value (dollars)	Encumberances and/or reservations
		T. 14 N., R. 8 E., SBM			
		Section 24			
81	CA-17714	E½E½SW¼, E½W½NE¼ SW¼.	50.0	$10,000.00	A-1,14,15; C-1.
		Section 25			
82	CA-17715	S½NE¼NE¼NE¼, N½SE¼N E¼NE¼.	10.0	5,000.00	A-1,4,11,12,14,15; C-1.
83	CA-17716	NW¼NE¼NE¼	10.0	5,000.00	A-1,4,9,14,15; C-1.
84	CA-17717	S½SW¼NE¼NE¼	5.0	2,500.00	A-1,12,14,15; C-1.
85	CA-17718	NW¼NE¼, NE¼SW¼NE¼, E½SE¼SW¼NE¼, E½E½ NE¼NW¼, NW¼NE¼NE¼ NW¼.	67.5	33,750.00	A-1,9,12,14,15; C-1.
86	CA-17719	SW¼NE¼SE¼NE¼	2.5	1,250.00	A-1,4,14,15; C-1.
87	CA-17720	W½SE¼NE¼	20.0	10,000.00	A-1,4,14,15; C-1.
		T. 14 N., R. 9 E., SBM			
		Section 19			
88	CA-17721	S½ lot 1 of SW¼	40.0	8,000.00	A-1,9,12,14,15; B-1,2; C-1.
89	CA-17722	Lot 2 of SW¼	75.0	15,000.00	A-1,6,9,12,14,15; B-1,2; C-1.
		Section 30			
873	CA-17727	NE¼NE¼NW¼NE¼	2.5	1,250.00	A-1,5,14,15; B-1,2.
874	CA-17728	SE¼NE¼NW¼NE¼	2.5	1,250.00	A-1,14,15; B-1,2.
880	CA-17733	NE¼NE¼SE¼SW¼,S½NE¼S E½SW¼.	7.5	3,000.00	A-1,2,10,14,15; B-1,2.
881	CA-17734	NW¼NE¼SE¼SW¼, NW¼SE¼SW¼.	12.5	5,000.00	A-1,2,11,14,15; B-1,2.
		Section 30			
882	CA-17735	S½SW¼SE¼SW¼	5.0	2,000.00	A-1,2,8,9,14,15; B-1,2.
883	CA-17736	NE¼NE¼NE¼SE¼	2.5	1,000.00	A-1,9,14,15; B-1,2.
884	CA-17737	W½NE¼NE¼SE¼	5.0	1,500.00	A-1,2,9,14,15; B-1,2.
885	CA-17738	SE¼NE¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,15; B-1,2.
886	CA-17739	W½NW¼NE¼SE¼, NW¼SW¼NE¼SE¼.	7.5	2,000.00	A-1,2,3,14,15; B-1,2.
887	CA-17740	NE¼SW¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,15; B-1,2.
888	CA-17741	SW¼SW¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,15; B-1,2.
889	CA-17742	SE¼SW¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,15; B-1,2.
890	CA-17743	NW¼SE¼NE¼SE¼	2.5	1,000.00	A-1,8,9,14,1,5; B-1,2.
891	CA-17744	SW¼SE¼NE¼SE¼	2.5	1,000.00	A-1,8,14,15; B-1,2.
892	CA-17745	SE¼SW¼NW¼SE¼, W½SE¼NW¼SE¼.	7.5	2,000.00	A-1,14,15; B-1,2.

The purpose of this sale is to dispose of scattered, isolated tracts of public land consistent with the California Desert Plan. The tracts, because of their location and other characteristics, are difficult and uneconomical to manage as part of the public lands, and are not suitable for management by another Federal department or agency.

Publication of this Notice of Realty Action in the **Federal Register** segregates the public lands from appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

BLM may accept or reject any and all bids or withdraw any land from sale at any time, if in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

Each parcel will be offered individually for sale by sealed bid only. All sealed bids must be submitted to the BLM's Barstow Resource Area Office at 831 Barstow Road, Barstow, California 92311, no later than 4:30 p.m., October 7, 1985. Sealed bids will be for not less than the appraised values specified in this notice with a separate bid submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior, BLM for not less than 10% of the amount bid. The sealed bid envelopes must be marked on the front, lower left corner as shown in the following *example:*

BID FOR PUBLIC LAND SALE
NOTICE OF REALTY ACTION
Parcel No. _____, Serial No. _____
Sale Date: October 8, 1985

If two or more envelopes containing valid bids of the same amount are received for the competitive sale parcels, the determination of which is to be considered the highest bid shall be by supplemental biddings.

The successful bidder shall submit the remainder of the full bid price prior to the expiration of 180 days from the sale date. Failure to submit the balance of the full bid within the above specified time limit shall result in cancellation of the sale and the deposit shall be forfeited and disposed of as other receipts of sale.

A successful bid will require an application for those mineral interests offered for conveyance in the sale. The mineral interests being offered for conveyance have no known mineral value. Some of the sale parcels do have prospectively valuable leaseable minerals which will be reserved to the United States. Only those mineral interests specified in this notice will be reserved. All other mineral interests will be conveyed with the surface estate. The declared high bidder will be required to deposit, within 30 days of the sale date, a $50.00 nonrefundable application fee for conveyance of the mineral estate, in accordance with section 209(b), FLPMA (90 Stat. 2757; 43 U.S.C. 1719). Failure to deposit this filing fee will result in disqualification as the high bidder.

I. Reservations to the United States

A. Rights-of-Way

A-1. A right-of-way for ditches or canals constructed by authority of the United States. The Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

A-2. Those rights for a public highway granted to the State of California, Department of Transportation under the Federal Aid to Highways Act of August 27, 1958 (72 Stat. 885; 23 U.S.C. 317); Grant No. LA-0166224.

A-3. Those rights for a public highway granted to the State of California, Department of Transportation under the Act of November 9, 1921 (42 Stat. 212); Grant No. R-01718.

B. Mineral Reservations

B–1. Sodium and Potassium

B–2 Oil and Gas

All minerals (or partial or specific mineral interests, where applicable) shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation will be incorporated in the patent document, is available for review at the Barstow BLM Office.

II. Rights of the Third Parties

The conveyances made by these land patents are subject to all valid existing rights, including the following:

A. Rights-of-Way

A–4. Those rights for a railroad line granted to the Tonopah and Tidewater Railroad Company under the Act of March 3, 1875 (18 Stat. 482; 43 U.S.C. 934–949); Grant No. R–4266.

A–5. Those rights for a 12 kV power transmission line granted to Southern California Edison Company under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–0169749.

A–6. Those rights for a 12 kV powerline and substation granted to Southern California Edison Company under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–0120280.

A–7. Those rights for telephone and telegraph lines granted to Pacific Bell, Incorporated, under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–0153023.

A–8. Those rights for telephone and telegraph lines granted to Pacific Bell, Incorporated, under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); Grant No. LA–047573.

A–9. Those rights for a 132 kV powerline and telephone line granted to Southern California Edison Company under the Act of December 21, 1928 (45 Stat. 1057; 43 U.S.C. 617); Grant No. R–01730.

A–10. Those rights for telephone and telegraph lines granted to Pacific Bell, Incorporated, under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–087350.

A–11. Those rights for telephone and telegraph lines granted to Pacific Bell, Incorporated, under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. LA–087417.

A–12. Those rights for a powerline application to Southern California Edison Company under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); Application No. CA–6276.

A–14. Rights-of-way for roadways and public utility purposes around the boundaries of each parcel along all section and quarter section lines subject to a 40-foot width and a 33-foot width along all other parcel boundaries under the Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1718).

A–15. Those rights for power transmission lines granted to the Intermountain Power Project under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); Grant No. CA–8294.

C. Flood Hazard

C–1. Conveyance documents will contain a covenant requiring all future developments to be in conformance with Ordinance 2417, adopted by the San Bernardino County Board of Supervisors on May 3, 1980. The ordinance regulates development in flood hazard/flood plains, and implements National Flood Insurance requirements (Executive Order 11988 of May 24, 1977).

III. All Bidders Must Be Either

(1) 18 years of age or older and provide proof of U.S. citizenship; or (2) a State, State instrumentality or political subdivision authorized to hold property; or (3) a corporation must be subject to the laws of the State of California or of the United States; or (4) an entity legally capable of conveying the holding lands or interests therein under the laws of the State of California, and where applicable, the entity shall also meet the requirements for 1 and 3 above. Proof of meeting these requirements shall accompany bids.

FOR FURTHER INFORMATION: An information packet with a description of the sale area and the sale procedures is available for review at the Barstow Resource Area Office, 831 Barstow Road, Barstow, California 92311. The environmental assessment and land report for the sale may also be reviewed at the Barstow Office. Additional information concerning this sale may be obtained by contacting Arnold Schoeck, Realty Specialist, at the Barstow Resource Area Office or at (619) 256–3595.

SUPPLEMENTAL INFORMATION: For a period of 45 days from the date of publication of the notice, interested parties may submit comments to the District Manager, California Desert District, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 7, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 19565 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–40–M

[F–14825–A]

Alaska Native Claims Selection; Alakanuk Native Corp.

In accordance with Department regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613, will be issued to Alakanuk Native Corporation for approximately 1.91 acres. The lands involved are in the vicinity of Alakanuk, Alaska within lot 1, U.S. Survey No. 4092.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the THE TUNDRA DRUMS. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal.

Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–19592 Filed 8–15–85; 8:45 am]

BILLING CODE 4310–JA–M

[F–84656]

Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(e), and

sec. 12(b)(6) of the Act of January 2, 1976, 43 U.S.C. 1611 nt, will be issued to Cook Inlet Region, Inc., for approximately 40 acres. The lands involved are located in the W2W2SW4, Sec. 31, T. 4 S., R. 7 W., Fairbanks Meridian, southeast of Nenana, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in THE ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–19588 Filed 8–15–85; 8:45 am]

BILLING CODE 4310-JA-M

[F-19155-39[1]]

Alaska Native Claims Selection; Doyon, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 98,535 acres. The lands involved are in the vicinity of the Fortymile National Wild and Scenic River Corridor, Alaska.

Fairbanks Meridian, Alaska

T. 4 S., R. 25 E. Unsurveyed
T. 3 S., R. 26 E. Unsurveyed
T. 4 S., R. 26 E. Unsurveyed
T. 2 S., R. 27 E. Unsurveyed
T. 3 S., R. 27 E. Unsurveyed
T. 4 S., R. 27 E. Unsurveyed
T. 2 S., R. 28 E. Unsurveyed
T. 3 S., R. 28 E. Unsurveyed
T. 4 S., R. 28 E. Unsurveyed
T. 4 S., R. 29 E. Unsurveyed
T. 5 S., R. 30 E. Unsurveyed
T. 5 S., R. 31 E. Unsurveyed
T. 4 S., R. 32 E. Unsurveyed
T. 4 S., R. 33 E. Unsurveyed

A notice of the decision will be published once a week for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–19589 Filed 8–15–85; 8:45 am]

BILLING CODE 4310-JA-M

Alaska Native Claims Selection; Eklutna, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Eklutna, Inc. The lands involved are:

Serial No.	Land description	Approximate acreage
AA-6661-C	T. 17 N., R. 1 E., Seward Meridian.	221
AA-6661-C	T. 18 N., R. 2 E., Seward Meridian.	96

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions shall have until September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[fR Doc. 85–19590, Filed 8–15–85; 8:45 am]

BILLING CODE 4310-JA-M

[AA-6661-A, AA-6661-B, AA-6661-D]

Alaska Native Claims Selection; Eklutna, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Eklutna, Inc., notice of which was published in the **Federal Register** on July 25, 1985, Vol. 50, No. 143, pp. 30306–30307 is modified by correcting the land description, changing the paragraph concerning navigability, and deleting another paragraph.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the ANCHORAGE DAILY NEWS. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box, 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until 30 days after publication (September 16, 1985) to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

[1] F-21901-21, F-21901-23, F-21901-25, F-21901-78, F-21904-49, F-21904-66, F-21904-72, F-21904-80, F-21904-85, F-21905-22, F-21905-27, F-21905-36, F-21905-71, F-21905-74, F-21905-75, F-21905-81.

Except as modified, the decision, notice of which was given July 25, 1985, is final.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-19591 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-JA-M

Alaska Native Claims Selection; Sealaska Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of secs. 14(h)(1), 14(h)(7) and 22(j), of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(h)(1), 1613(h)(7), 1621(j), will be issued to Sealaska Corporation. The lands involved are within the Tongass National Forest.

COPPER RIVER MERIDIAN, ALASKA

Serial Number	Land description	Approximate acreage
AA-10465	T. 80 S., R. 86 E., Sec. 36; T. 80, S., R. 87 E., Sec. 31;	33.20
AA-10506	T. 52 S., R. 68 E., Sec. 29;	9.5
AA-10527	T. 42 S., R. 63 E., Secs. 16 and 17	5.6

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Juneau Empire. Copies of the decisions may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decisions shall have until 30 days after September 16, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-19593 Filed 8-16-85; 8:45 am]

BILLING CODE 4310-JA-M

Arizona; Yuma District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Yuma (Arizona) District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Yuma District Advisory Council will be held Friday, September 20, 1985, at 9 a.m. in the Conference Room of the District Office located at 3150 Winsor Avenue, Yuma, Arizona.

The agenda for the District Advisory Council meeting includes:

1. District Manager's Update.
2. Resource Management Plan Update.
3. Concessions Program Update.
4. Long-Term Visitor Area Program Update.
5. Wilderness.
6. Sanitary Landfills.
7. Communication Sites.
8. Advisory Council Initiated Topics.q02

The meeting is open to the public. Interested persons may make oral statements to the Council on September 20, or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by 4 p.m., September 19, so time can be reserved. Depending on the number of persons wishing to address the Council, a per person time limit may be considered.

FOR FURTHER INFORMATION CONTACT: Douglas B. Stockdale, (602) 726-6300.

SUPPLEMENTARY INFORMATION: Summary minutes of the District Advisory Council meeting will be maintained in the Yuma District Office and will be available for inspection and reproduction during regular business hours (7:45 a.m.-4:30 p.m.) within 30 days of the meeting.

Dated: August 8, 1985.

J. Darwin Snell,

District Manager.

[FR Doc. 85-19564 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-32-M

[W-81925-I]

Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-81925-I for lands in Natrona County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the data of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16-⅔ percent, respectively.

The leasee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The leasee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-81925-I effective January 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tershis,

Chief, Leasing Section.

[FR Doc. 85-19562 Filed 8-15-85; 8:85 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Becharof National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S. Fish and Wildlife Service has issued a Record of Decision (ROD) on the Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Becharof National Wildlife Refuge, Alaska, pursuant to sections 304 (g) (1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act 1964, and section 102(2) (C) of the National Environmental Policy Act of 1969.

DATE: This ROD on the CCP/EIS will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

Copies of the ROD will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the ROD may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service has selected *Alternative B* as described in the Becharof National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review for implementation. The Service is also recommending two additions on the Becharof National Wildlife Refuge to the National Wilderness System: (1) The northeast section of the refuge including the drainages of Big Creek, the eastern reaches of the King Salmon River, and Gertrude Creek; and (2) the southeast section of the refuge including the Mount Peulik-Gas Rocks area, Mount Becharof, and the drainages of Otter Creek, Featherly Creek and Island Arm.

Alternative B provides the highest degree of resource protection and the greatest opportunity for achieving the purposes set forth in ANILCA while balancing conservation of fish and wildlife populations and habitats with opportunities for compatible fish and wildlife-oriented recreation. In order to implement some aspects of the plan, the Service will commence preparation of regulations governing resource management on Becharof NWR for public review. They will be published in a proposed form and public hearings will be conducted in the vicinity of the refuge to solicit public input prior to their finalization.

Dated: August 12, 1985.

David L. Olsen,

Acting Regional Director.

[FR Doc. 85-19515 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-55-M

Izembek National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The U.S. Fish and Wildlife Service has issued a Record of Decision (ROD) on the Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Izembek National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act 1964, and section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: This ROD on the CCP/EIS will be implemented immediately with specific management plans undergoing development and regulations proposed for promulgation.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3399.

Copies of the ROD will be sent to all persons and organizations on the mailing list. Others wishing to receive a copy of the ROD may obtain one by contacting Mr. Knauer.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service has selected *Alternative A* as described in the Izembek National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review for implementation. The Service is not recommending any additions on the Izembek National Wildlife Refuge to the National Wilderness System.

Alternative A, continuing current management practices, provides the highest degree of resource protection and the greatest opportunity for achieving the purposes set forth in ANILCA including conservation of fish and wildlife populations and habitats.

Dated: August 12, 1985.

David L. Olsen,

Acting Regional Director.

[FR Doc. 85-19516 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Ashland Exploration, Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6094, Block 211, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on August 8, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: August 9, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-19552 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Assateague Island National Seashore Establishment

The Act of September 21, 1965 (79 Stat. 824; 16 U.S.C. 459F), requires that a declaration of the establishment of Assateague Island National Seashore be published in the **Federal Register** when it is determined that land, water areas, or interests therein have been acquired in sufficient quantities within the Seashore area depicted on map NS-AI-7100A, dated November 1964, to provide an administrable unit.

Since the land and water areas, or interests therein, acquired for this Seashore are in sufficient quantities to provide an administrable unit, I hereby give notice that the Assateague Island National Seashore is declared established.

Further, notice is hereby given that the refined boundaries of the Seashore are as depicted on map 622-30,003, dated September, 1972, which map is on file and available upon request in the office to the Superintendent, Assateague Island National Seashore, Route 2, Box 294, Berlin, Maryland 21811, and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20240. As nearly as practicable, the boundaries so depicted are identical to

those described under Section 1 of the Act, supra.

Dated: August 9, 1985.

William Penn Mott, Jr.,

Director.

[FR Doc. 85-19613 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-70-M

Name Change; Fort Donelson National Military Park

The Act of September 8, 1960 (74 Stat. 875), authorizes redesignation by the Secretary of the Interior from National Military Park to National Battlefield upon acquisition of additional lands. Ninety-seven percent of the land at the Park has been acquired; 420 acres have been acquired since 1960.

Pursuant to the above Act, the area formerly known as "Fort Donelson National Military Park," established pursuant to the Act of March 26, 1928 (45 Stat. 367), shall henceforth be known as the "Fort Donelson National Battlefield."

Dated: August 9, 1985.

William Penn Mott, Jr.,

Director.

[FR Doc. 85-19612 Filed 8-15-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30710]

Altra Railroad Co.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission grants the petition of Altra Railroad Company for exemption from the requirements of prior approval under (a) 49 U.S.C. 10901 with respect to the operation of a line of railroad between Mabel and Tarrytown in Sumter County, FL, and (b) 49 U.S.C. 11301 with respect to the issuance of certain common stock and the issuance of debt obligations in an aggregate amount of up to $500,000.

DATES: This exemption will be effective on August 15, 1985. Petitions to reopen must be filed by September 5, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30710 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: William P. Jackson, Jr., Post Office Box 1240, Arlington, VA 22210

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan Area) or toll-free (800) 424-5403.

Decided: August 7, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Chairman Taylor did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-19526 Filed 8-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB 256X; Finance Docket No. 30652]

Ottumwa Connecting Railroad Co.; Exemption; Discontinuance of Operations at Ottumwa, IA and Colorado and Eastern Railroad Co.; Exemption; Operation at Ottumwa, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Commission exempts (1) the discontinuance of operations by Ottumwa Connecting Railroad Co. from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, and (2) the operation by the Colorado and Eastern Railroad Company of 1.89 miles of rail line at Ottumwa, IA from the prior approval requirements of 49 U.S.C. 10901.

DATES: This exemption is effective August 15, 1985. Petitions to reopen must be filed by September 5, 1985.

ADDRESSES: Send pleadings referring to AB 256X or Finance Docket No. 30652 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 2043

(2) Gary W. Flanders, Colorado and Eastern Railroad Company, 76 S. Sierre Madre, Suite 230, Colorado Springs, CO 80903

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call toll free (800) 424-5400 or 289-4357 (DC Metropolitan Area).

Decided: August 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-19527 Filed 8-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30703]

Soo Line Railroad Co.; Joint Use of Lines; Chesapeake and Ohio Railway Co.; Exemption

On July 17, 1985, the Soo Line Railroad Company (SOO) and the Chesapeake and Ohio Railway Company (C&O) filed a notice of exemption for a relocation project under 49 CFR 1180.4(g). The notice involves SOO's relocation of certain of its overhead operations between Detroit, MI and Chicago, IL pursuant to a joint use agreement between SOO and C&O. The applicable rail yards are the Rougemere Yard at Detroit and the Shiller Park Yard at Chicago. The Railway Labor Executives' Association filed a letter requesting the imposition of labor protective conditions.[1]

SOO indicates at present a portion of its traffic moves between Chicago, IL and points west, on the one hand, and points east of Detroit, MI, on the other. SOO further represents that in conjunction with its affiliate, CP Rail, they own several lines of railroad between Detroit, MI and Chicago, IL by which SOO and CP Rail conduct rail freight operations. C&O and its affiliates own or have access to several lines between the two cities and by this agreement C&O will move SOO's overhead traffic, over certain lines of railroad between these points with none of the subject traffic being originated, terminated or interchanged by C&O at any point along the routes used used for the movements. By this transaction, SOO's overhead traffic will be handled more efficiently since it will be moved over shorter routes and will be handled in special C&O train service which will eliminate delays resulting from the interchange of traffic and related yard and terminal operations. The parties anticipate that the operating economies and efficiencies to be achieved by this joint use agreement will enhance the financial viability of both railroads and

[1] Position statements have been filed in opposition to the notice of exemption proceeding by the Chicago and North Western Transportation Company and the Grand Trunk Corporation. The Commission has instituted a proceeding in response. Interested parties should contact Louis E. Gitomer at (202) 275-7245 for further information.

permit them to better utilize existing facilities for transportation purposes.

The Notice of Exemption indicates that this joint project involves the relocation of a line(s) of railroad which does not disrupt service to shippers and falls within the class of transaction identified at 49 CFR 1180.2(d)(5) which the Commission has found to be exempt under 49 U.S.C. 10505. See *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Notice cites *Southern Pac. Transp. Co. & SSW Ry. Co.—Exemption*, 363 I.C.C. 848, 851–52 (1981) in which the Commission found that the existing class exemption for relocation projects includes transactions wherein a carrier transfers operations from one line to another, so long as service to shippers is not disrupted. In *Southern Pac.*, the Commission likewise concluded such relocation transactions generally do not affect matters which are of regulatory interest.

As a condition to the use of this exemption, any employees affected by this joint use agreement shall be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Finally, if the notice of exemption contains false or misleading information, the notice will be considered void *ab initio*.

Decided: August 9, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–19530 Filed 8–15–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–26 (Sub-30X)]

Southern Railway Co., Abandonment Exemption in Bibb and Shelby Counties, AL

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 11.37 mile line of railroad between Milepost 19.42–S at Boothton and Milepost 30.79.79–S at Blocton, together with 5.77 miles of adjacent branch lines between Milepost PB–0.0 at Seymour and Milepost PB–3.82 at Piper and between Milepost BE–0.0 at Ardela and Milepost BE–1.95 at Belle Ellen, for a total of 17.14 miles in Bibb and Shelby Counties, AL. Applicant was authorized to discontinue operations over these lines in 1965.[1]

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandoment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 15, 1985, (unless stayed pending reconsideration). Petitions to stay must be filed by August 26, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 5, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Nancy Fleischman, 1050 Connecticut Avenue, NW., Suite 740, Washington, DC 20036.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 5, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–19529 Filed 8–15–85; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-4)]

Intrastate Rail Rate Authority; Florida

AGENCY: Interstate Commerce Commission.

ACTION: Assumption of Commission Jurisdiction over Florida Intrastate Rail Transportation.

SUMMARY: Pursuant to a request from the Florida Public Service Commission (FPSC), the Commission will assert jurisdiction over intrastate freight rates in Florida and vacate FPSC's provisional certification.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: In Ex Parte No. 388 (Sub-No. 4), *Intrastate Rail Rate Authority—Florida* (not printed), served March 18, 1983, the Commission extended the provisional certification of Florida pursuant to 49 U.S.C. 11501 to allow the State time to make necessary amendments, in conformance with Federal law, as set forth in that decision.

In a letter filed July 1, 1985, Florida states that it will not seek final certification to regulate intrastate freight rates. Florida also requests that this Commission exercise jurisdiction over Florida's intrastate railroad freight rates effective October 1, 1985.

We will assume jurisdiction over Florida intrastate rail rates on October 1, 1985, to permit Florida to complete its deregulatory process and facilitate a smooth transfer of authority. At the same time, Florida's provisional certification to regulate intrastate rates will be terminated. Rail carriers in Florida must comply with Commission regulations, including the filing of intrastate tariffs with the Commission. Parties that seek to continue litigating cases that were pending before FPSC must advise Deputy Director Louis E. Gitomer, Rail Section, Office of Proceedings. In the case of any remaining pending State section 229 cases, parties must consult immediately with Chief Administrative Law Judge David Allard. In this way, we will develop, with the parties, appropriate steps in each case to transfer the records and establish procedural schedules.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 11501.

Decided: August 7, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–19526 Filed 8–15–85; 8:45 am]

BILLING CODE 7035–01–M

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use

[1] Finance Docket No. 23226, *Southern Ry. Co. and L&N R.R. Co.-Abandonment of Operations between Gurnee Jct. and Blocton, AL* (not printed), served February 5, 1965.

compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and Address of Principal Office: Brendle's Incorporated, 1919 North Bridge Street, Elkin, North Carolina 28621.

2. Wholly-Owned Subsidiaries Which Participate in the Operations, and State(s) of Incorporation:

(i) Brendle Transport, Inc., a North Carolina corporation.

1. Parent Corporation and address of principal office: Dart & Kraft, Inc., 2211 Sanders Road, Northbrook, IL 60062.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

A. Dart Industries Inc. (Delaware).

(i) Duracell, Inc. (Delaware).

(ii) Duracell Inc. (Delaware).

(iii) Precor Incorporated (Delaware).

B. Hobart Corporation (Delaware).

C. Kraft, Inc. (Delaware).

(i) Celestial Seasonings, Inc. (Delaware).

(ii) Celestial Transport, Inc. (Colorado).

(iii) Churny Company, Inc. (Delaware).

(iv) Cosmopolitan Ice Cream Company (New York).

(v) Früsen Gladjé, Ltd. (New York).

(vi) Ridg's Finer Foods, Inc. (Delaware).

(vii) Westman Commission Company (Colorado).

(viii) Lender's Bagel Bakery (Division).

1. Parent corporation and address of principal office: Savannah Foods & Industries, Inc., P.O. Box 339, Savannah, GA 31402.

2. Wholly-owned subsidiaries which will participate in the operations, address of their principal office, and state of incorporation:

State of Incorporation

(a) Everglades Sugar Refinery, Inc., P.O. Box 278, Clewiston, FL 33440, Florida.

(b) Transales Corporation, P.O. Box 9177, Savannah, GA 31402-0339, Delaware.

(c) Food Carrier, Inc., P.O. Box 2287, Savannah, GA 31402-2287, Georgia

(d) Sunaid of Florida, Inc., P.O. Box 427, Hialeah, FL 33011-0427, Delaware.

(e) Georgia Canada Blending Enterprises Corporation, 1000 Canada Bldg. 374 Quellette Avenue, Windsor, ON N9E 1A9, Ontario

(f) Michigan Sugar Company, P.O. Box 1348, Saginaw, MI 48605, Michigan

(g) Pioneer Food Service Corporation, 2218 Enterprise Avenue, Jackson, MI 49201, Michigan

(h) Great Lake Sugar Terminal, Inc., P.O. Box 728, Fremont, OH 43420, Ohio

(i) Great Lakes Sugar Company, P.O. Box 89, Findlay, OH 45840, Ohio

(j) American Fuel Trading Company, P.O. Box 369, Federalsburg, MD 21632, Delaware.

1. Parent Corporation: Witco Chemical Corporation, 520 Madison Avenue, New York, NY 10022, State of Incorporation-Delaware.

2. Wholly owned subsidiaries which will participate in the operations:

(a) Aero Oil Company, Inc., 2215 No. Alvord Street, Indianapolis, IN 46205 State of Incorporation—Indiana.

(b) Beam Oil Co., Inc., 1533 Marietta Road, NW., Atlanta, GA 30377, State of Incorporation—Georgia.

(c) Continental Carbon Co., 10500 Richmond Avenue, Houston, TX 77042, State of Incorporation—Delaware.

(d) Pearsall Chemical Corp., 10500 Richmond Avenue, Houston, TX 77042, State of Incorporation—New Jersey.

(e) Southwest Peto-Chem., Inc., 1400 So. Harrison, Olathe, KS 66061, State of Incorporation—Delaware.

(f) U.S. Peroxygen Co., 850 Morton Avenue, Richmond, CA 94804, State of Incorporation—Delaware.

(g) Argus Chemical Corporation, 633 Court Street, Brooklyn, NY 11231, State of Incorporation—Delaware.

(h) Chemprene, Inc., 570 Fishkill Avenue, Beacon, NY 12508, State of Incorporation—Delaware.

(i) Empak Transportation Co., 1400 So. Harrison, Olathe, KS 66061, State of Incorporation—Delaware.

(j) Richardson Chemical Co., Allied-Kelite Div., 2701 Lake Street, Melrose Park, IL 60601, State of Incorporation—Delaware.

(k) The Richardson Co., 2701 Lake Street, Melrose Park, IL 60160, State of Incorporation—Delaware.

James H. Bayne,

Secretary.

[FR Doc. 85-19525 Filed 8-15-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N1301, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Collection of Information in Current Rules

Occupational Safety and Health Administration

Construction Crane Rating Chart and Limitation Instructions

OSHA 228

Recordkeeping

Business or other for profit; small businesses or organizations
19 respondents; 4550 hours; 0 forms

Construction crane rating charts, assigned machine use limitations, and attachment capacity ratings are necessary for crane use by employers using a crane, regardless of user entity. These documentations are used to prevent overloading, misuse and procedures that will cause employee injuries.

Occupational Safety and Health Administration
Portable Fire Extinguishers; Hydrostatic Test Record
OSHA 205
On occasion
State or local governments, businesses or other for profit; federal agencies or employees; small businesses or organizations
7,058,824 respondents; 2,964,706 hours; 0 forms

Requires that portable fire extinguishers be hydrostatically tested every 5 to 12 years depending upon the type of shell construction. A record of the test containing the date of test, the test pressure, and the name of the individual or agency doing the test.

Occupational Safety and Health Administration
Crane or Derrick Annual Inspection Record Construction
OSHA 229
Recordkeeping
Businesses or other for profit; small businesses or organizations
113,000 respondents; 1,090,450 hours; 0 forms

Construction employers are required to keep a record of the thorough annual inspection of hoisting machinery and each piece of equipment in order to assure timely replacement and service necessary for safe use of the machinery.

Reinstatement

Occupational Safety and Health Administration
Maritime—Material Handling Hooks and Unfired Pressure Vessels 1218–0052; OSHA 237
Recordkeeping
Businesses or other for profit; Federal agencies or employees; small businesses or organizations
900 respondents; 1,350 hours; 0 forms

To ensure that hooks that are used for materials handling and unfired pressure vessels that have not been rated by the manufacturer or a standards organization and are used by shipyard personnel are examined and tested before use.

Occupational Safety and Health Administration
Installation and Operation of Resistance Welding Equipment
29 CFR 1910.252(c)(6)
1218–0056; OSHA 219
Recordkeeping
Businesses or others for profit; non-profit institutions; small businesses or organizations
150,000 respondents; 50,000 hours; 0 forms

The information is needed to assure the effectiveness of the regulation. The recordkeeping provides the Agency with adequate information to indicate the equipment is maintained properly and may prevent severe physical harm or death.

Occupational Safety and Health Administration
Construction Oxygen and Toxic Gas Test
1218–0054; OSHA 230
Recordkeeping
Businesses or others for profit; small businesses or organizations
196 respondents; 703 hours; 0 forms

The required information is needed when internal combustion engines exhaust into an enclosed space to assure that oxygen and toxic gas level are properly controlled to eliminate employee exposure to a hazardous environment.

Signed at Washington, D.c. this 13th day of August, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–19633 Filed 8–15–85; 8:45 am]

BILLING CODE 4510-26-M

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: September 10, 1985, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, D.C., this 12th day of August 1985.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 85–19634 Filed 8–15–85; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

United States Employment Service; Labor Certification Process for the Temporary Employment of Aliens in Agriculture; 1985 Adverse Effect Wage Rates and Plans for 1986

AGENCY: Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of Adverse Effect Wage Rates for 1985 and Plans for 1986.

SUMMARY: The Director, U.S. Employment Service, announces 1985 adverse effect wage rates (AEWRs), that is, the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S and alien workers by employers of temporary alien agricultural workers. AEWRs are established and set to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers. The Director also announces plans for AEWRs for 1986.

EFFECTIVE DATE: August 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Telephone: 202–376–6228.

SUPPLEMENTARY INFORMATION:

Requirement of Notice

The Department of Labor (DOL) has published regulations at 20 CFR Part 655, Subpart C, for the certification of non-immigrant aliens for temporary employment in the United States in agriculture and logging. These regulations require the Director, United States Employment Service (USES), to cause a notice to be published in the **Federal Register** each calendar year, announcing the adverse effect wage rates (AEWRs) for agricultural workers (except sheepherders) in fourteen States and for sugar cane workers in Florida. 20 CFR 655.207(b).

Agricultural Adverse Effect Wage Rates: 1985

Based upon 1983–1984 aggregate average weekly wage data supplied by the Bureau of Labor Statistics and upon

the methodology set forth at 20 CFR 655.207(b)(1), DOL has computed the 1985 AEWRs. The AEWRs set forth in the table below have been computed using the methodology adopted by DOL by rulemaking on September 2, 1983. The AEWR for each State has been changed from last year's AEWR by the same percentage change as the percentage change (from the second year previous to the year previous) in the ES-202 report's aggregate average weekly wage rates for the appropriate group of agricultural workers. The appropriate group of agricultural workers are those U.S. agricultural workers described in the regulation at 20 CFR 655.207(b)(1).

The 1985 AEWRs, along with the 1984 AEWRs and the percentage changes in the various rates over the year, are published in the table below.

AGRICULTURAL ADVERSE EFFECT WAGE RATES: 1985

States	1984 rates [1]	1985 rates	Percentage change [2]
Arizona	$4.10	$4.20	+2.5
Colorado	[3]	[3]	
Connecticut	4.11	4.16	+1.3
Florida (except sugarcane)	4.54	4.91	+8.1
Florida (sugarcane only)	5.61	6.06	+8.1
Maine	4.21	4.26	+1.3
Maryland	4.54	4.63	+2.0
Massachusetts	4.11	4.16	+1.3
New Hampshire	4.41	4.47	+1.3
New York	4.26	4.32	+1.3
Rhode Island	4.11	4.16	+1.3
Texas	4.97	4.20	+5.8
Vermont	4.34	4.40	+1.3
Virginia	4.55	4.64	+2.0
West Virginia	4.40	4.49	+2.0

[1] 49 FR 31767 (August 8, 1984).
[2] Based upon the Bureau of Labor Statistics ES-202 reports' aggregate average weekly wage data for appropriate groups of workers and the formula published at 20 CFR 655.207(b)(1).
[3] DOL has determined that there are not yet available data sufficient to set an AEWR for Colorado. See 49 FR 31764 (August 8, 1984). When such data are available, the Director, U.S. Employment Service, will announce that State's AEWR in the FEDERAL REGISTER.

Plans for 1986

Since the U.S. Department of Agriculture (USDA) has resumed the collection of data on agriculture wage rates on a quarterly basis, DOL intends to immediately start the process to develop a methodology for utilizing USDA data for AEWRS for 1986. If a methodology results from this process, it will be publicized through informal rulemaking procedures, and a proposed rule will be published with appropriate opportunity for comment by all interested parties. This process will begin as soon as possible.

Signed at Washington, D.C. this 12th of August, 1985.

Richard C. Gilliland,

Director, U.S. Employment Service.

[FR Doc. 85-19623 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-85-12-M]

Chevron Resources Co; Petition for Modification of Application of Mandatory Safety Standard

Chevron Resources Company, Manila Star Route, Vernal, Utah 84078 has filed a petition to modify the application of 30 CFR 56.9088 (rollover protective structures; ROPS) to its Vernal Pit (I.D. No. 42-00998) and Vernal Mill (I.D. No. 42-00164) both located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that rollover protective structures (ROPS) be installed on the mine's D-4E side boom pipe layer.

2. This machine is a track-type tractor equipped with a side boom principally used to travel along a graded right-of-way and position lengths of pipe either on the right-of-way or in a trench alongside the right-of-way.

3. As an alternate method, petitioner proposes to use this pipe layer without ROPS and believes that use of a side boom for positioning pipe along a right-of-way is more practical and just as safe as using a wheel-mounted crane equipped with ROPS for the same purpose.

4. Petitioner further states that the equipment manufacturer states that this equipment is not compatible with ROPS.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before (September 16, 1985). Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19635 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-74-C]

Gateway Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Gateway Coal Company, 1200 First Security Plaza, Lexington, Kentucky 40507 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Gateway Mine (I.D. NO. 36-00906) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Peititioner has a pump room which is located in and near entries that were driven in 1935 to transport coal from the mine workings to the river tipple. All three of these entries are maintained as intake airways; there are no return airways available for ventilating the pump room.

3. As an alternate method, petitioner proposes to install an active fire suppression system in lieu of ventilating the pump room into a return airway. The pump room is of fireproof construction, consisting of steel, concrete and concrete block with a sand rock top, and will have doors that are self closing.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19636 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-8-M]

Hydrocarbon Resources Co.; Petition for Modification of Application of Mandatory Safety Standard

Hydrocarbon Resources Company, Star Route 2, Box 192, Randlett, Utah 84063 has filed a petition to modify the application of 30 CFR 57.19102 (shafts) to its Cottonwood Mine (I.D. No. 42-01789) located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a means be provided to guide the movement of a shaft conveyance.

2. As an alternate method, petitioner proposes to use glancing boards on the shaft ends and the walls of the shaft for the sides.

3. Due to the narrowness of the vein, the shaft walls can be cut to accommodate the conveyance. The interface between the Gilsonite and the rock walls is smooth, which allows the conveyance to move freely in the shaft.

4. Because the vein is narrow, petitioner states that a guide rail would restrict the ingress and egress from the conveyance, creating a potential hazard.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19637 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-76-C]

LJ's Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

LJ's Coal Corporation, P.O. Box 98, St. Charles, Virginia 24282 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-12741 and 44-05668) located in both Harlan County, Kentucky and Lee County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric fact equipment.

2. The minimum height of the present working section ranges from 44 to 54 inches; the overall height of the mine ranges from 44 to 62 inches.

3. Petitioner states that use of a canopy on the mine's scoops and shuttle cars would result in a diminution of safety for the miners affected because the canopy will restrict the equipment operator's seating position and limit the operator's visibility, increasing the chances of an accident.

In addition, petitioner states that use of a canopy on the mine's roof bolters would hinder the operation of the machine due to the added weight.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19638 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-63-C]

Preece Energy, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Preece Energy, Inc., P.O. Box 408, Turkey Creek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-09916) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 mine is in the Thacker seam and ranges from 40 to 47 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the canopies can strike and dislodge roof support, increasing the chances of an accident. The canopies also limit the equipment operator's visability and restrict the operator's seating position, creating a potential hazard.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 9, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19639 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-10-M]

Tenneco Minerals Co.; Petition for Modification of Application of Mandatory Safety Standard

Tenneco Minerals Company, P.O. Box 1167, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.21-46 (crosscut intervals) to its Soda Ash Project (I.D. No. 48-01295) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that crosscuts be made at intervals not in excess of 100 feet between entries and between rooms.

2. As an alternate method, petitioner proposes to develop rooms up to 350 feet before crosscuts or a breakthrough occurs during the retreating phase of panel extraction. During this process, a room is driven approximately 300 feet through a solid block of ore between panels, causing a breakthrough into the previously mined panel. This

breakthrough enables the panel ventilation to flow over the continuous miner as crosscuts are cut retreating from the room.

3. In support of this alternate method, petitioner states:

(a) A blowing auxiliary fan and tubing will deliver at least 4,000 cfm of air over the continuous miner at all times during the driving of the 350-foot room;

(b) After breakthrough occurs, the entire panel ventilation will be coursed through the room and exhaust into a previously mined panel;

(c) The turning and cutting of the crosscuts will take place with substantial ventilation flowing over the continuous miner and away from the miners; and

(d) By cutting the crosscuts in retreat from the room, the miners would be always working next to a solid block of ore, increasing the safety of the miners. In addition, the mined out area is abandoned, preventing exposure of the miners to potentially hazardous roof and rib conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 16, 1985. Copies of the petition are available for inspection at that address.

Dated: August 8, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-19640 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-43-M

Summary of Decisions Granting in Whole or in Part Petitions for Modification

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

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: that an alternative method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petitioner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: August 8, 1985.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-81-41-M	46 FR 45453	United Salt Corp	30 CFR 57.4-42	Petitioner's proposed three-part response program in the event of a fire in the structure which houses the mine opening and main fan considered acceptable alternate method. Granted with specific conditions.
M-81-42-M	46 FR 45453	do	30 CFR 57.4-62	Do.
M-81-43-M	46 FR 45453	do	30 CFR 57.4-43	Do.
M-84-20-M	49 FR 50125	Signal Mountain Cement Co	30 CFR 56.16-14(b)	Operation of the overhead crane without automatic switches to halt uptravel of the blocks before they strike the hoist considered acceptable alternate method. Granted with conditions.
M-84-23-M	49 FR 47130	International Salt Co	30 CFR 57.21-21(b)	Petitioner's proposal that a responsible person be in attendance in the immediate area of the main fan(s) while persons are underground considered acceptable alternate method. Granted with conditions.
M-84-24-M	49 FR 50123	do	30 CFR 57.21-20(b)	Do.
M-84-25-M	50 FR 572	do	30 CFR 57.21-20(f)	Do.
M-84-27-M	49 FR 50124	Rio Algom Mining Corp	30 CFR 57.21-46	Mining a maximum distance of 500 feet prior to making a connection between entries and rooms considered acceptable alternate method. Granted with conditions.
M-82-102-C	48 FR 4574	Consolidation Coal Co	30 CFR 75.1101-8	Use of a single line of automatic sprinklers for its fire protection system at main and secondary belt conveyor drives considered acceptable alternate method. Granted in part with conditions.
M-83-121-C	49 FR 676	Emerald Mines Corp	30 CFR 75.1700	Petitioner's proposal to plug and mine through oil and gas wells with specified precautions considered acceptable alternate method. Granted with conditions.
M-83-145-C	49 FR 4567	Big Hill Coal Co	30 CFR 75.1710	Use of cabs or canopies on the mine's electric fact equipment in specified low mining heights would result in a diminution of safety. Granted with conditions.
M-84-12-C	49 FR 11027	Lambert Coal Co., Inc	30 CFR 75.506(d) and 75-1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-38-C	49 FR 14214	Jim Walter Resources, Inc	30 CFR 75.326	Petitioner's proposal to isolate the belt entries which are used as intake entries from other intake and return entries with permanent-type stopping constructed of specified substantial, incombustible material considered acceptable alternate method. Granted with conditions.
M-84-39-C	49 FR 15159	do	30 CFR 75.326	Do.
M-48-59-C	49 FR 40498	E.T.R. Mining Co., Inc	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-71-C	49 FR 22578	North River Energy Corp	30 CFR 75.1103-4(a)	Installation of a carbon monoxide monitoring system along the beltline considered acceptable alternate method. Granted with conditions.
M-84-72-C	49 FR 14214	do	30 CFR 75.326	Petitioner's proposal to use the belt-track entries as intake air-courses with specified safeguards considered acceptable alternate method. Granted with conditions.
M-84-83-C	49 FR 22575	Deer Creek Mining Co	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a diminution of safety. Granted in part.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-84-90-C	49 FR 10724	Eastern Associated Coal Corp	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-110-C	49 FR 22577	K.M. and K. Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-111-C	49 FR 26161	Empire Energy Corp	30 CFR 75.326	Use of low-level continuous carbon monoxide monitoring devices in belt lines used for intake airways considered acceptable alternate method. Granted with conditions.
M-84-125-C	49 FR 22574	Ash Coal Co	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-134-C	49 FR 23259	Old Ben Coal Co	30 CFR 75.1700	Petitioner's proposal to plug and mine through oil and gas wells with specified precautions considered acceptable alternate method. Granted with conditions.
M-84-140-C	49 FR 35052	H.A.T. Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-157-C	49 FR 31176	Consolidation Coal Co	30 CFR 75.1101-8	Use of a single line of automatic sprinklers for fire protection at main and secondary belt conveyor drives considered acceptable alternate method. Granted with conditions.
M-84-168-C	49 FR 31182	Twin Oak Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-176-C	49 FR 40501	Peabody Coal Co	30 CFR 75.503	Use of a bracket on the battery with a set screw-type arrangement to lock it down on the mine's scoops considered acceptable alternate method. Granted with conditions.
M-84-181-C	49 FR 40505	U.S. Steel Mining Co., Inc	30 CFR 75.1700	Petitioner's proposal to plug and mine through oil and gas wells with specified precautions considered acceptable alternate method. Granted with conditions.
M-84-186-C	49 FR 40503	Quarto Mining Co	30 CFR 75.506(d) and 75.1303	Use of the nonpermissible FEMCO Ten-Shot Blasting Unit with specific safeguards considered acceptable alternate method. Granted.
M-84-187-C	49 FR 40500	Peabody Coal Co	30 CFR 75.305	Due to adverse roof conditions, establishing air measurement stations at specific locations considered acceptable alternate method. Granted with conditions.
M-84-188-C	49 FR 31175	Chestnut Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.
M-84-191-C	49 FR 31178	Kitt Energy Corp	30 CFR 75.1700	Petitioner's proposal to plug and mine through oil and gas wells with specified precautions considered acceptable alternate method. Granted with conditions.
M-84-213-C	49 FR 46823	Canada Coal Co., Inc	30 CFR 75.305	Due to a rock fall, establishing of an air measurement station considered acceptable alternate method. Granted with conditions.
M-84-228-C	49 FR 46827	Thac West Mining, Inc	30 CFR 75.1710	Use of cabs or canopies in specified mining heights on the mine's electric face equipment would result in a diminution of safety. Granted with conditions.
M-84-229-C	49 FR 46826	Mid-Continent Resources, Inc	30 CFR 75.1303	Use of the nonpermissible explosives and detonating devices without evacuating personnel outby the portals considered acceptable alternate method. Granted with conditions.
M-84-252-C	49 FR 50123	C.R. and C. Coal Co	30 CFR 75.301	Proposed airflow reduciton, which would maintain a safe and healthful atmosphere, considered acceptable alternate method. Granted with conditions.

[FR Doc. 85-19641 Filed 8-15-85; 8:45 am]
BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Maryland State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupation Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart O to Part 1952 containing the decision.

The Maryland State plan provides for the adoption of Federal standards as State standards after comments and public hearing. Section 1952.210 of Subpart O sets forth the State's schedule for the adoption of Federal standards. By letter dated February 27, 1985, from Commissioner Dominic N. Fornaro, Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to (1) 29 CFR 1910.19, 29 CFR 1910.1000, 29 CFR 1910.1047 and Appendices A,B,C, and D, pertaining to Ethylene Oxide as published in the **Federal Register** of June 22, 1984, (49 FR 25795–25802), and (2) 29 CFR 1910.1043 pertaining to corrections to Cotton Dust Standard as published in the **Federal Register** of October 10, 1980 (49 FR 67339–67340). The standards are contained in COMAR 09.12.31. Maryland Occupational Safety and Health Standards were promulgated after public hearings on October 12, 1984. These standards were effective February 25, 1985.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, Room N-3476, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law, including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective August 16, 1985.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Philadelphia, Pennsylvania, this 26th day of June, 1985.

Linda R. Anku,

Regional Administrator.

[FR Doc. 85-19642 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefit Programs Office

[Application No. D-5333]

Withdrawal of the Proposed Exemption Involving the Muesco, Inc. Profit Sharing Plan, (the Plan) Located in Houston, Texas

In the Federal Register dated October 26, 1984 (49 FR 43129), the Department of Labor (the Department) published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of the Plan.

By letter of July 17, 1985, the Department informed the applicant's representative that because of the failure of the Plan's independent fiduciary to respond to comments raised with respect to the proposed exemption or to schedule a conference with respect to the proposed exemption, the Department had made a final decision to withdraw the notice of pendency of the proposed exemption from the Federal Register.

Accordingly, this application is hereby withdrawn from consideration by the Department of Labor.

Signed at Washington D.C., this 9th day of August 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-19663 Filed 8-15-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-134; Exemption Application No. D-5793 et al.]

Grant of Individual Exemptions; Ironworkers Local No. 4, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings.

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Ironworkers Local No. 6 Pension Fund (the Plan) Located in Buffalo, New York

[Prohibited Transaction Exemption 85-134; Exemption Application No. D-5793]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase by the Plan of an unimproved parcel of real property from the Ironloc No. 6 Corporation, a party in interest with respect to the Plan, provided that the terms of such transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 21, 1985 at 50 FR 20962.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Atkinson Trading Co., Inc. Pension Plan (the Plan) Located in Gallup, New Mexico

[Prohibited Transaction Exemption 85-135; Exemption Application No. D-5805]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease beyond June 30, 1984 of certain real property by the Plan to Atkinson Trading Co., Inc. the employer, provided the terms and conditions of such lease are as favorable to the Plan as those obtainable in a similar transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 7, 1985 at 50 FR 24066.

Effective Date: July 26, 1984

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Consultants in Cardiology, P.A. Pension Plan (the Plan) Located in Millburn, New Jersey

[Prohibited Transaction Exemption 85-136; Exemption Application No. 5897]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the loan (the

Loan) of $100,000 by the Plan to Consultants in Cardiology, P.A. (the Employer); and (2) the guarantee of repayment of the Loan by Drs. Donald Rothfeld and Roland Werres,the shareholders of the Employer; provided that the terms of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 18, 1985 at 50 FR 25349.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Profit Sharing Plan and Trust of Laboratory Medicine and Pathology, Inc. (the Plan) Located in Radford, Virginia

[Prohibited Transaction Exemption 85–137; Exemption Application No. D–5963]

Exemption

The sanctions rersulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase by the Plan of a certain parcel of unimproved real property (the Property) located in Montgomery County, Virginia from Antonio and Enrique Perez, the sons of Antonio and Ana Perez, the owners of the Plan sponsor and the Plan participants, for $25,000 cash, provided that such price is no more than the fair market value of the Property at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 2, 1985 at 50 FR 27385.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemption are supplemental to and not in derogation of, any other provisions of the act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington DC, this 8th day of August, 1985.

Elliott I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85–19662 Filed 8–15–85; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission—new, revision, or extension: New.

2. The title of the information collection: Generic Letter to Collect Operator Licensing Examination Data.

3. The form number if applicable: N/A.

4. How often the collection is required: Annually.

5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.

6. An estimate of the number of responses: 88 annually.

7. An estimate of the total number of hours needed to complete the requirement or request: 176 annually.

8. Section 3504(h). Pub. L. 96–511 does not apply.

9. Abstract: This generic letter to nuclear power facilities requests the estimated number of candidates and dates for operator licensing examinations. This letter also requests the anticipated dates for requalification examinations. This information is requested for four fiscal years, commencing with the present. This information would be used to plan budgets and resources in regards to operator examination scheduling in order to meet the needs of the nuclear industry.

ADDRESSES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 396–7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 12th day of August, 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–19617 Filed 8–15–85; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Licensee Event Report System.

3. The form number if applicable: NRC Forms 366, 366A, and 366B.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Holders of Operating Licenses for Commercial Nuclear Power Plants.

6. An estimate of the number of responses: 2,360.

7. An estimate of the total number of hours needed to complete the requirement or request: 118,000.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC collects reports of operational events at commercial nuclear power plants in order to incorporate lessons of that experience in the licensing process, and to feed back the lessons of that experience to the nuclear industry.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 9th day of August, 1985

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-19618 Filed 8-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-254, License No. DPR-29, EA 84-123]

Commonwealth Edison Co. (Quad Cities Plant, Unit 1); Order Imposing Civil Monetary Penalty

I

Commonwealth Edison Company (the "licensee") is the holder of Operating License No. DPR-29 (the license") issued by the Nuclear Regulatory Commission (the "Commission"). The license authorizes the licensee to operate the Quad Cities Plant, Unit 1, in accordance with the conditions specified therein. The license was issued on December 12, 1972.

II

A special inspection of the licensee's activities was conducted during the period October 25—November 4, 1984. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with Commission requirements and the conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated December 12, 1984. The Notice states the nature of the violation, the requirements of the Commission regulations or license conditions that were violated, and the amount of civil penalty proposed for the violation. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty with a letter dated February 15, 1985.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments regarding rescission or mitigation contained therein, as set forth in the Appendix to this Order, the Director Office of Inspection and Enforcement, has determined that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1984, as amended, 42 U.S.C. 2282, Pub. L. 96–295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thrity days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, washington, D.C. 20555 and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thrity days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II above; and

(b) Whether on the basis of such violation this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 9th day of August, 1985.

James M. Taylor

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

The licensee's February 15, 1985 response to the December 12, 1984 Notice of Violation and Proposed Imposition of Civil Penalty for the Commonwealth Edison Company (CE) Quad Cities Plant, Unit 1 admits the facts occurred as stated in the Notice but denies that a violation occurred. The violation involved a Unit 1 licensed operator who left his assigned position unattended, with the Unit operating at full power, for a period of approximately 15 minutes while he responded to an event that was in progress on the adjacent Unit. During this period, there was no licensed operator at the controls of Unit 1 except when the Unit 1 operator responded to an annuciator on his own Unit. The licensee's arguments and the NRC's evaluation are as follows:

Restatement of the Violation

10 CFR 50.54(k) states, "An operator or senior operator licensed pursuant to Part 55 of this chapter shall be present at the controls at all times during the operation of the facility."

Technical Specification 6.2.A. requires that detailed written procedures be prepared, approved, and adhered to for operating activities involving nuclear safety.

Station Procedure QAP-300-2, Conduct of Shift Operations, paragraph 9, delineates responsibilities of all operating department personnel licensed by the Nuclear Regulatory Commission as *Rreactor Operators* and performing the duties of a reactor operator. Section 9b of responsibilities and duties states, "b. To be present at the controls of his assigned shift position at all times."

The duty is further clarified by a notation in the procedure which states in part:

Paragraph k of 10 CFR Part 50 states "An operator or senior licensed pursuant to part 55 of this chapter shall be present at the controls at all times during the operation of the facility." In order to comply with this paragraph, an operator will be considered to be at the reactor controls if he (she) is physically within the operation area in front of the unit panels.

Contrary to the above, on October 25, 1984, the Unit 1 operator licensed pursuant to Part 55 was not present at the controls at all times during the operation of the facility. The Unit 1 operator left his assigned unit unattended with the Unit at full power, for a period of approximately 15 minutes, while responding to event occurring on the adjacent Unit. Specifically, the Unit 1 operator left his position to assist the Unit 2 operator in bypassing the Rod Worth Minimizer and then manually initiated the High Pressure Coolant Injection system on Unit 2. During this period there was no operator at the controls physically within the operating area in front of the unit panels of Unit 1, except when he responsided to an annunciator on his Unit.

This is a Severity Level III violation (Supplement I). (Civil Penalty—$50,000).

Summary of Licensee's Response

The licensee argues that the "at-the-controls" language of § 50.54(k) is vague and subject to differing interpretations. CE notes that the Notice of Violation cited Quad Cities Station Procedure QAP-300-2 as a basis for the proposed violation (see restatement of violation for QAP-300-2 language) but contends that additional language in this procedure is relevant.

The licensee contends that the Unit 1 operator was always in a position to view the Unit 1 visual alarms and was always within audible range of the Unit 1 annunciators during the fifteen minute period in question. It is the licensee's position that the distinct locations of Unit 1 and 2 annunciators, at opposite ends of the control room, precluded the possibility of confusing a Unit 2 annunciator with a Unit 1 annunciator. The licensee also contends that the conduct of the Unit 1 operator showed professionalism that was consistent with the letter and spirit of 10 CFR 50.54(k). Commonwealth Edison argues that a citation in this case would be inconsistent with the NRC's position in the past. The licensee states that procedures similar to the procedure in question have been in effect since at least 1977 and have always been understood as not precluding the operator of a stable unit from assisting an operator experiencing difficulty at another unit as long as his actions did not interfere with his ability to respond to potential safety events at his unit. The licensee further argues that Quad Cities operators have done so in the past and were never criticized by the NRC for such conduct.

CE requests that if the Notice of Violation is not withdrawn for the reasons stated above, the penalty should be mitigated because CE has instituted certain short-term and long-term corrective measures. In the short-term the corporate office directed that operating personnel shall not leave the immediate area of the control room for which they have responsibility. Long-term action included amending the Quad Cities Conduct of Operations Directive and Station Procedures. It is CE's position that since the company's response to the NRC's concerns was timely and consistent with the situation, and CE conducted an immediate investigation of the incident and issued comprehensive guidance addressing the concerns, a basis was formed for mitigation of the civil penalties if the violation is not withdrawn.

NRC Evaluation

The NRC staff has carefully reviewed the licensee's response and has concluded that the licensee did not provide any information that was not already considered in determining the significance of the violation and the appropriate civil penalty. While the licensee maintains that the operator acted in a professional manner in assisting the Unit 2 operator, the facts are unchanged that the operator left the controls of a reactor operating at 100 percent power for a period of time without proper relief or authorization.

The NRC does agree with the licensee's statement that the operator was within audible range of the Unit 1 annunciators under some circumstances. There were, however, at least two circumstances which could have interfered with proper attention to Unit 1 operation or problems if they had occurred. First, the operator had his back to the Unit 1 panels during the time he was working on a Unit 2 system and was presumably concentrating on Unit 2 concerns. Second, if a scram at Unit 2 had occurred, with the many alarms associated with such a scram, the NRC believes there is a real probability that the Unit 1 operator would not have been able to differentiate a Unit 2 annunciator from a Unit 1 annunciator.

With the respect to the licensee's argument that the NRC is changing its interpretation of 10 CFR 50.54(k), it has *always* been the NRC position that the operator must be present at the controls at all times during operation of the facility except in an emergency when action is immediately needed to protect the public health and safety (10 CFR 50.54(x)). Section 50.54(k) is clear on this point. Regulatory Guide 1.114, Paragraph B, provides further amplification, if any is needed, as to what 10 CFR 50.54(k) requires. It states:

> In order for the operator at the controls of a nuclear power plant to be able to carry out these and other responsibilities in a timely fashion, he must give his *attention* to the condition of the plant *at all times* [emphasis added].

It is the responsibility of the licensee to ensure that station procedures are consistent with the regulations. The licensee's procedures state "... an operator will be considered to be at the reactor controls if he (she) is physically within the operating area in front of the unit panels. An operator is not at the controls when behind the panels or out of the control room." Although this procedure describes some examples of not being at the controls, it does not cover all of the possible situations such as the one at issue here. To read it as describing all of the impermissible situations would be inconsistent with the regulations and inappropriate.

The NRC was also concerned that the off-going Shift Control Room Engineer (SCRE), by leaving the control room to go and talk to the Shift Engineer, did not exercise adequate control over the control room operators during the transient. Because the SCRE was out of the control room he was (1) unaware that Unit 1 was unattended and (2) the Unit 1 operator did not receive proper relief or authorization when leaving the controls.

NRC inspectors have always taken the position that when a reactor operator was away from the control panels, another licensed operator must monitor the status of the "unattended" unit except in an emergency as described above. This was not such an emergency. To the extent that Quad Cities personnel have previously acted in a fashion similar to that which is the subject of the violation at issue, such actions were improper. The NRC was unaware of such past practice and, had it been aware, would not have condoned it.

With respect to mitigation of the civil penalty, the NRC staff can find no basis for such action. As stated in the NRC's December 12, 1984 letter to CE, this violation is indicative of poor performance in the area of adherence to operating procedures which define responsibilities for the control of control room operations. Your corrective actions for previous violations in this area should have precluded this latest event. In fact, the latest event, in conjunction with prior events, could be used as basis for escalation of the base civil penalty. However, since your corrective actions were prompt and extensive, no increase in the civil penalty was proposed.

NRC Conclusion

For the above reasons, the NRC staff believes that the violation occurred as stated. As previously stated, although the NRC staff does recognize that the licensee has taken corrective actions, mitigation of the proposed penalty is not warranted. Thus, the violation occurred as stated and a civil penalty in the amount of $50,000 is appropriate.

[FR Doc. 85-19619 Filed 8-15-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 30-20982, License No. 37-23370-01, EA 85-01]

North American Inspection, Inc.; Order Imposing Civil Monetary Penalties

I

North American Inspection, Inc., 3906 Main Street, P.O. Box 88, Laurys Station, Pennsylvania (the "licensee"), is the holder of License No. 37-23370-01 (the "license") issued by the Nuclear Regulatory Commission (the "NRC") which authorizes the licensee to possess and use radioactive materials in accordance with conditions specified therein. License No. 37-23370-01 was issued on April 5, 1984.

II

A safety inspection of the licensee's activities under the license was conducted on October 18-19, 1984 at the licensee's facility in Laurys Station, Pennsylvania, and at a radiography field site in Bethlehem, Pennsylvania. Another NRC safety inspection was conducted on January 10, 1985 at the licensee's facility in Laurys Station, Pennsylvania, and on January 16, 1985 at a radiography field site in Lebanon, New Jersey. As a result of the inspections, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated February 6, 1985. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalties. Responsee dated February 21 and 26, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalties were received from the licensee. In addition, at the request of the NRC, a financial statement was provided by the licensee by letter dated April 10, 1985.

III

Upon consideration of the licensee's reponses and the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Five Thousand Dollars ($5,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties; and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 7th day of August 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

In the licensee's February 21 and 26, 1985 and April 10, 1985 responses to the Notice of Violation and Proposed Imposition of Civil Penalties dated February 6, 1985, the licensee denies some of the violations and admits others; requests reduction of the severity level of the violations; and requests that the penalties be waived, claiming that imposition of the civil penalties will be a financial burden to the company. Provided below are (1) a restatement of each violation; (2) a summary of the licensee's response regarding each violation; and (3) the NRC's evaluation of the licensee's response.

Restatement of Violation A

10 CFR 34.31(a) requires that no individual act as a radiographer until that individual can demonstrate his understanding of the instructions which he has received regarding the subjects covered in Appendix A of Part 34 and has successfully completed a written test and a field examination on the subjects covered.

Contrary to the above, on October 18, 1984, at a field site in Bethlehem, Pennsylvania, individuals were permitted to act as radiographers prior to demonstrating their understanding of the subjects outlined in Appendix A of Part 34, prior to passing a written test, and prior to demonstrating their competence to use the licensee's radiographic exposure devices, survey instruments, and related handling tools.

Summary of Licensee's Response Regarding Violation A

The licensee concedes that, for Individual B, management did not produce documents to support Individual B's radiographer status at the time of the inspection.

NRC Evaluation of Licensee's Response Regarding Violation A

At the time of the inspection, the licensee's President (who was also the acting Radiation Safety Officer), the licensee's Operations Manager, and Individual A, who is the husband of Individual B, each told the NRC inspectors that Individual B was only qualified to be a Radiographer's Assistant. At the time of the inspection and at the enforcement conference on November 14, 1984, the licensee did not provide any information to indicate that Individual B had completed all training requirements of the license and 10 CFR Part 34. A recent inspection conducted on June 13 and 14, 1985 at NAI revealed that Individual B had completed the radiographer's examination in April 1984, but did not compete the required practical factors test until February 1985. Since Individual B performed as a radiographer without having satisfied

the required program for qualification, the violation remains as stated.

The fact that Individual C also performed as a radiographer without completing the required training was not disputed in the licensee's response. Therefore, the violation remains as proposed.

Restatement of Violation B

10 CFR 34.41 requires the radiographer or radiographer's assistant to maintain direct surveillance of the operation to protect against unauthorized entry into a high radiation area.

Contrary to the above, on October 18, 1984, at a field site in Bethlehem, Pennsylvania, a high radiation area existed in a building adjacent to the area where radiographic operations were being performed, and direct surveillance was not maintained to protect against unauthorized entry into the high radiation area.

Restatement of Violation C.1

10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited so that an individual who was continuously present in the area could not receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days.

Contrary to the above, on October 18, 1984, at a field site in Bethlehem, Pennsylvania, radiation levels of 200 millirems per hour existed in an unrestricted area of an adjacent building when radiography was being conducted using a cobalt-60 source. Access to this area was not controlled for the purposes of radiation protection.

Summary of Licensee's Response Regarding Violations B and C.1

The licensee's response states that as a service company they were subordinate to Bethlehem Steel Corporation's Radiation Safety Program. The licensee's consultant states that the NRC inspector did not identify the area correctly, access was limited and posted, and surveillance was maintained. The consultant further states, ". . . where the readings were taken by the inspector in the adjacent bay was at an overhead roll-up position and was the worst exposure condition for the day . . ."

NRC Evaluation of Licensee's Response Regarding Violations B and C.1

The licensee's contention that it is subordinate to Bethlehem Steel's Radiation Safety Program is incorrect, and demonstrates an inadequate understanding of the responsibilities of an NRC licensee. The inspectors observed that licensee personnel did not survey and control access to the storage bay adjacent to the end of the building where radiography was taking place, and in this area, the NRC inspector measured a radiation dose rate of 200 millirems per hour. Although the licensee contends that Bethlehem was aware of its radiography activity and restricted personnel from being in the area, Bethlehem Steel representatives informed the inspectors that their Fire Marshall was required to enter this area periodically during his routine tours of the Bethlehem facility. The licensee acknowledges that it did not maintain direct surveillance of this area. Therefore, the violations remain as proposed.

Restatement of Violation C.2

10 CFR 20.105(b) requires that radiation levels in unrestricted areas be limited so that an individual who was continuously present in the area could not receive a dose in excess of 2 millirems in any hour or 100 millirems in any seven consecutive days.

Contrary to the above, on October 4, 1984, radiation levels in excess of the limits set forth in 10 CFR 20.105(b) existed in a restaurant which is located 44 feet from the licensee's facility in Laurys Station, Pennsylvania in which radiography took place.

Summary of Licensee's Response Regarding Violation C.2

The licensee contends that the radiation levels outside the licensee's facility in Laurys Station, Pennsylvania never exceeded the limits of 10 CFR 20.105.

NRC Evaluation of Licensee's Response Regarding Violation C.2

The licensee's survey report for October 4, 1984, which was examined at the time of the NRC inspection, indicated that a radiation level of two millirems per hour existed at 200 feet from the source in all directions. While the licensee now contends that this recorded survey is in error, the licensee does not provide the reasons why the record of the survey was incorrect, and did not provide any information in their response regarding the actual radiation levels measured by the radiographer in the unrestricted area in the vicinity of the Laurys Station facility. This would include the areas outside the unshielded bay doors on the south side of the facility, and all other areas to which access is not controlled by the licensee. Therefore, the violation remains as proposed.

Restatement of Violation D

10 CFR 34.29(b) requires that each entrance used for personnel access to the high radiation area in a permanent radiographic installation have both visible and audible warning signals to warn of the presence of radiation. The visible signal is required to be actuated by radiation whenever the source is exposed and the audible signal is required to be actuated when an attempt is made to enter the installation while the source is exposed.

Contrary to the above, as of October 19, 1984, the permanent radiographic installation located in the Laurys Station, Pennsylvania facility did not have the required warning signals installed.

Summary of Licensee's Response Regarding Violation D

The licensee contends that the facility located in Laurys Station, Pennsylvania is not a permanent radiographic installation.

NRC Evaluation of Licensee's Response Regarding Violation D

10 CFR 34.29 defines a permanent radiographic installation as ". . . a shielded installation or structure designed or intended for radiography and in which radiography is regularly performed."

In their response, the licensee indicates that the Laurys Station facility is a shielded structure and also indicates that two different radiography firms have performed radiography there since at least 1979. Further, information supplied by the licensee to the NRC indicated that this facility was used regularly between April and October 1, 1984. Since the facility is shielded, apparently intended for radiography, and radiography was regularly performed there, the Laurys Station facility met the definition of a "permanent radiographic installation" as defined by 10 CFR 34.2(h). Therefore, since the required warning signals were not installed, a violation of 10 CFR 34.29 remains as proposed.

Restatement of Violations E.1, E.2, and E.3

10 CFR 71.5(a) requires that licensed material being transported comply with the applicable requirements of the regulations appropriate to the mode of transport of the Department of Transportation in 49 CFR Parts 170–189.

1. 49 CFR 172.403(c) requires that packages containing radioactive material with radiation levels in excess of 50 millirem per hour at the package surface or 1 millirem per hour at three

feet be affixed with a Radioactive Yellow III label.

Contrary to the above, on October 19, 1984, a radioactive exposure device exhibiting radiation levels of 60 millirem per hour at the surface and 1–2 millirem per hour at three feet was transported without a Radioactive Yellow III label affixed to the device.

2. 49 CFR 172.504(a) requires that a vehicle carrying packages bearing the Radioactive Yellow III level be placarded on each end and each side with "Radioactive" placards.

Contrary to the above, on October 19, 1984, a radioactive exposure device that should have been labeled with a Radioactive Yellow III label was transported in a vehicle which was not properly placarded.

3. 49 CFR 173.448(a) requires each shipment of radioactive material to be secured in order to prevent shifting during normal transportation conditions.

Contrary to the above, on October 18, 1984, a radioactive exposure device was transported without being secured to the vehicle in order to prevent shifting during normal transportation.

Summary of Licensee's Response Regarding Violations E.1, E.2, and E.3

The licensee states ". . . management personnel disclosed that there exists a lack of understanding in part of this procedure," referring to 49 CFR 171 through 177. The licensee contends that the NRC inspector did not witness the use of the truck, but obtained hearsay information from a licensee employee and contends that the materials were in storage. The licensee also contends that the procedure in its manual specifies compliance with DOT regulations.

NRC Evaluation of Licensee's Response Regarding Violations E.1, E.2, and E.3

At the time of the inspection, the inspectors were informed by licensee personnel that the vehicle they had inspected was used the previous day to transport licensed material and that the truck was in the same condition when the inspectors observed it as it was the previous day.

The NRC utilizes observations by the inspectors, statements by licensee personnel, records maintained by the licensee and measurements made by inspectors as the bases for determining compliance with NRC regulations and license conditions. In this instance, NRC measurement of the radiation levels from the package in question and statements from licensee employees concerning the conditions of transport of the package provided the bases for the violation. Further, regarding the licensee's procedures which specify compliance with DOT regulations, the failure to implement these procedures and comply with the appropriate regulations were the bases for the violation. Therefore, the violations remain as proposed.

Restatement of Violation F

10 CFR 34.23(b) requires that a physical radiation survey be made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device must be surveyed and, if the device has a source guide tube, the survey must include the entire length of the guide tube.

Contrary to the above, on October 18, 1984, a radiographer's assistant did not perform a survey that was adequate to determine that the sealed source had returned to its shielded position in that the survey did not include the entire circumference of the exposure device and the entire length of the guide tube.

Summary of Licensee's Response Regarding Violation F

The licensee acknowledges the violation, but contends the requirement's intent was fulfilled. The licensee urges these requirements be administered and implemented with discretion.

NRC Evaluation of Licensee's Response Regarding Violation F

The meaning of the requirement is clear; namely, that a complete survey of the entire circumference of the exposure device and the entire length of the guide tube must be made after each radiographic exposure. The inspectors observed that neither Individual B nor Individual C performed these surveys as required. Therefore, the violation remains as proposed. The inspector noted that Individual A, the only qualified individual performing radiography the day of the inspection, did survey the guide tube.

Restatement of Violation G

10 CFR 34.27 requires that a utilization log be maintained indicating the plant or site where the radiation expsoure devices are used.

Contrary to the above, on October 19, 1984, a cobalt-60 exposure device was used at a field site in Bethlehem, Pennsylvania, but such use was not indicated in the utilization log.

Summary of Licensee's Response Regarding Violation G

The licensee contends that this was a misunderstanding by the NRC inspector because he thought the "check-out and storage form" was being used as a utilization log. The licensee states that the storage utilization log would have been completed when the radiographer's shift was completed.

NRC Evaluation of Licensee's Response Regarding Violation G

10 CFR 34.27 requires that a log be maintained current where devices are used. The purpose of the log is defeated if entries are made when use of the device is complete and the device is returned to the storage location. The storage utilization log is intended to record the location of the exposure devices when they are in the field. The NRC inspector verified, while reviewing the form, that a device had been removed from storage and the storage utilization log was not completed to reflect this removal. Therefore, the violation remains as proposed.

Restatement of Violation H

10 CFR 20.408(b) requires that a report be sent to the NRC of an individual's exposure to radiation when he terminates employment.

Contary to the above, since April 5, 1984, four individuals terminated employment, but as of October 19, 1984, termination reports were not provided to the NRC.

Summary of Licensee's Response Regarding Violation H

The licensee acknowledges this violation.

NRC Evaluation of Licensee's Response Regarding Violation H

No evaluation required.

Restatement of Violation I

Condition 17 of License No. 37–23370–01 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application dated January 31, 1984, and letters dated March 22, 1984 and May 4, 1984.

Item 5.3.3 on page 5.2 of the application dated January 31, 1948, requires that a person hired with radiographer credentials from another company complete a practical performance examination before being assigned to perform radiography.

Contrary to the above, as of January 11, 1985, a person hired with radiographer credentials from another company did not complete a practical performance examination before being assigned to perform radiography.

Summary of Licensee's Response Regarding Violation I

The licensee does not deny this violation.

NRC Evaluation of Licensee's Response Regarding Violation I

No evaluation required.

Restatement of Violation J

10 CFR 34.22(a) requires that, during radiography operations, the sealed source assembly be secured in the shielded position each time the source is returned to that position.

Contrary to the above, on January 16, 1985, a radiographer performed a number of radiographic exposures and cranked the source from the end of the guide tube to the shielded position in the exposure device each time, but did not secure the source between each exposure.

Summary of Licensee's Response Regarding Violation J

The licensee stated ". . . we do not consider 'secure' to having the same meaning as 'lock'. Otherwise, why would both words be used in paragraph 10 CFR 34.22(a) & (b) if one word meant the same as both." The licensee stated that the radiographer properly surveyed his camera to assure that the source was in the secured position and the camera was under his constant surveillance at all times.

NRC Evaluation of Licensee's Response Regarding Violation J

The requirement in 10 CFR 34.22 to secure the source assembly in the shielded position each time means that the licensee must do more than merely retract the source to the shielded position and keep it under observation. Some positive action is required to prevent the inadvertent release of the source from the shielded position if the device or crank is moved. For most radiographic sources this may indeed mean using the locking device on the source. But the requirement to secure it after each exposure is separate from the requirement to keep the source locked if it is not under direct surveillance. In this case the device was not locked or otherwise positively secured between exposures and the violation remains as proposed.

Summary of Licensee's Response to Proposed Imposition of Civil Penalities

The licensee maintains that the civil penalty should be withdrawn due to its financial condition. It claims to have been in business only a short time (approximately 16 monhts) and to have been undercapitalized from the outset. At the request of NRC Region I, the licensee submitted financial statements in support of this position indicating that it has a substantial accumulated debt. It further maintains that this civil penalty, when coupled with current tax liabilities and operating costs, will force the company to file for protection under the Federal Bankruptcy Laws, Chapter 11.

NRC Evaluation of Licensee's Response to Proposed Imposition of Civil Penalities

The Enforcement Policy makes clear that is not the intent of a civil penalty to put a licensee out of business or adversely affect a licensee's ability to safely conduct licensed operations. The assessment of a civil penalty should take into account a licensee's ability to pay. However, after the staff analysis of the financial statement submitted with the licensee's letter of April 10, 1985, the NRC is not convinced that civil penalties of the magnitude proposed ($5,000) will put this licensee out of business. Although it is conceded that the company may have a cash flow problem, the licensee's net sales for the last nine months of CY 1984 should enable the licensee to pay the civil penalty and to safely conduct licensed operations. This is especially true since much of the company's debt is owed to either its majority or minority stockholders.

NRC Conclusion

The licensee's response does not justify withdrawal of any of the violations, or reducing the severity level of the violations. Accordingly, civil penalities of Five Thousand Dollars are imposed.

[FR Doc. 85-19620 Filed 8-15-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-387]

Pennsylvania Power and Light Co. et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part requests by the licensee for amendments to Facility Operating License NPF-14, issued to the Pennsylvania Power and Light Company, for operation of the Susquehanna Steam Electric Station, Unit 1 located in Luzerne County, Pennsylvania. The Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on December 31, 1984 and January 23, 1985 (49 FR 252) and (50 FR 3051) respectively.

The amendments as proposed by the licensee, would change the Unit 1 Technical Specifications as follows: (1) Page 3/4 3-55/Table 4.3.6-1: Changing Channel Calibration surveillance intervals to be less conservative than the present requirement. Experience has shown that electrical equipment will tend to drift or fail and as a result surveillance requirements were established. The frequency of surveillance has been based on the difficulty in conducting the surveillance test and the consequence of equipment failure. The staff has defined the required surveillance intervals on a generic basis in the standard Technical Specifications. The licensee has proposed substantial departures from the requirements in the standard Technical Specifications, but has not provided an acceptable basis for this departure from the staff's judgment. Therefore, the staff has denied the licensee's request. (2) Page 3/4 3-8: Incorporating a quarterly surveillance interval for the channel functional test for the Scram Discharge Volume (SDV) float switches. The staff has denied this request and requires the licensee to test on a monthly basis. The objective of the SDV modification was to provide reliable instrumentation which can accommodate a single random failure or potential common-cause failures for all postulated SDV filling events. The basis for this denial is the same as that stated above. Additionally, experience has shown that problems have been experienced in the past with these SDV float switches and these problems have been discovered as a result of the surveillance tests. Therefore, the staff finds the monthly testing interval to serve a useful purpose. (3) Page 3/4 5-5/ Insert A: Including a new surveillance requirement to test the LOCA/false LOCA logic in support of two unit operation. The staff has denied this proposal due to the potentially long time lapses between testing of the LOCA/ false LOCA logic. The staff finds that the licensee's proposal does not provide good assurance that the LOCA/false LOCA logic will be surveilled on an appropriate schedule. The staff understands that the licensee has undertaken a study to determine more accurately an appropriate surveillance requirement based on this study. It is the staff's understanding that when this study is completed the licensee will submit it to the staff along with a request for new surveillance requirement for review and approval. (4) Page 3/4 7-9 through 3/4 7-30/Snubbers:

Revising the snubber Technical Specifications by placing the inspection schedule of snubbers on a system basis rather than a plant or unit basis. The staff has denied this request based on the fact that the intent of visual inspection is to survey all snubbers in a plant and to locate those which may suffer from an identified failure mode, which may not always be system specific. Operating experience has indicated that snubber inoperabilities are not generally related to the systems on which they are installed. Such inoperabilities are usually caused by either:

1. An isolated incident such as installation error,
2. A problem related to the snubber design, or
3. A general environment problem, such as high temperature or radiation.

None of the above causes are system unique. The staff believes that the visual inspections should be used to identify the type of inoperable snubbers, and reinspection intervals should be based on the number of failures within the identified type instead of the specific system to which the original inoperable snubber was attached. All other portions of the proposed amendments were granted on April 12, 1985 Amendment 36 and April 23, 1985 Amendment 41. Notice of issuance of Amendment Nos. 36 and 41 were published on April 23, 1985 (50 FR 16024) and May 21, 1985 (50 FR 21002).

By September 18, 1985, the licensee may demand a hearing with respect to the denials described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC.

For further details with respect to this action see (1) the application for amendments dated May 18, 1984 as supplemented on September 20, 1984, March 11 and 13, 1985 and April 4, 1985; and application dated November 13, 1985, (2) the Commission's letters to the licensee dated April 12, 1985 and April 23, 1985 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland, this 5th day of August 1985.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85-19621 Filed 8-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Company of Colorado (Fort St. Vrain Nuclear Generating Plant); Order Modifying License Confirming Licensee Commitments on Post-TMI Related Issues

I

Public Service Company of Colorado (PSC or the licensee) is the holder of Facility Operating License No. DPR-34 which authorizes the operation of the Fort St. Vrain Nuclear Generating Station (the facility) at a steady-state power level not in excess of 842 megawatts thermal. The facility is a high temperature gas-cooled reactor (HTGR) located at the licensee's site in Weld County, Colorado.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

PSC responded to Generic Letter 82-33 by letter dated April 14, 1983. By letters dated July 5, 1983, March 9, 1984, and April 30, 1985, PSC clarified some dates as a result of negotiations with the NRC staff. In these submittals, PSC made commitments to: (1) Complete all of the basic requirements prior to returning to operation following the fourth refueling outage (currently scheduled to begin in January 1987); (2) perform a verification and validation effort to evaluate the completed activities; and (3) resolve any problems detected during the verification and validation effort by the fifth refueling outage. The attached Table summarizing PSC's schedular commitments or status was developed by the NRC staff from the Generic Letter and the information provided by PSC.

PSC's commitments include (1) dates for providing required submittals to the NRC, and (2) dates for implementing certain requirements.

The NRC staff reviewed PSC's April 14, 1983 letter and entered into negotiations with the licensee regarding schedules for meeting the requirements of Supplement 1 to NUREG-0737. As a result of these negotiations, the licensee clarified certain dates by letters dated July 5, 1983, March 9, 1984, and April 30, 1985. The NRC staff finds that the modified dates are reasonable, achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide the required upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of PSC's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

IV

Accordingly, pursuant to Sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that facility operating license No. DPR–34 is modified to provide that the licensee shall: Implement the specific items described in the Attachment to this order in the manner described in PSC's submittals noted in Section III herein no later than the dates in the Attachment.

Extensions of time for completing these items may be granted by the Director, Division of Licensing, NRR, for good cause shown.

V

The licensee or any other person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Regional Administrator, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. A copy should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section IV of this Order.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 2nd day of August, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737

Title	Requirement	Licensee's completion schedule (or status)
1. Safety Parameter Display System (SPDS).	1a. Submit a safety analysis and an implementation plan to the NRC.	1a. Complete 11/13/84.
	1b. SPDS fully operational and operators trained.	1b. 4th refueling.[1]

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG–0737—Continued

Title	Requirement	Licensee's completion schedule (or status)
2. Detailed Control Room Design Review (DCRDR).	2a. Submit a program plan to the NRC.	2a. Complete 7/13/83.
	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	2b. Complete 4/30/85.
3. Regulatory Guide 1.97—Application to Emergency Response Facilities.	3a. Submit a report to the NRC describing how the requirements of Supplement 1 to NUREG–0737 have been or will be met.	3a. Complete 2/28/85.
	3b. Implement (installation or upgrade) requirements.	3b. 4th refueling.[1]
4. Upgrade Emergency Operating Procedures (EOPs).	4a. Submit a Procedures Generation Package to the NRC.	4a. October 31, 1985.
	4b. Implement the upgrade EOP.	4b. April 30, 1987.
5. Emergency Response Facilities.	5a. Technical Support Center.	5a. Complete as of April 14, 1983.[2]
	5b. Operational Support Center.	5b. Complete as of April 14, 1984.[2]
	5c. Emergency Operations Facility.	5c. Complete as of April 14, 1983.[2]

[1] Currently scheduled for January 1987.
[2] Operational except for data systems as described in licensee submittal dated April 14, 1983, fully functional at fourth refueling currently scheduled for January 1987.

[FR Doc. 85–19622 Filed 8–15–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on September 4 and 5, 1985, Room 1046, 1717 H Street NW., Washington, DC.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss General Electric proprietary information.

The agenda for subject meeting shall be as follows:

Wednesday, September 4, 1985—8:30 a.m. until the conclusion of business
Thursday, September 5, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will review Regulatory Guide 1.99, Revision 2, and other related concerns, and discuss the status of the NDT of piping program and the HSST program. The Subcommittee will also review steam generator girth weld cracks.

Oral statement may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff members as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634/1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one of two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 13, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–19625 Filed 8–15–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Reactor Operations; Meeting

The ACRS Subcommittee on Reactor Operations will hold a meeting on September 9, 1985, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, September 9, 1985—1:00 p.m. until the conclusion of business

The Subcommittee will discuss recent operating occurrences.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 12, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-19626 Filed 8-15-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- River assessment study
- Anadromous fish section—Hydro Assessment Study
- Discussion of Issue Papers
- FERC update
- Other
- Public comment

Status: Open

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee.

DATE: August 13, 1985, 10:00 a.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-19553 Filed 8-15-85; 8:45 am]

BILLING CODE 0000-00-M

Production Planning Adivsory Committee; Notice

AGENCY: Production Planning Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Discussion of productivity analysis issue paper
- Discussion of production investment policies issue paper
- Discussion of resident fish substitutions issue paper
- Other
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee.

DATE: August 14, 1985, 9:30 a.m.

ADDRESS: The meeting will be held in the Council's meeting room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-19554 Filed 8-15-85; 8:45 am]

BILLING CODE 0000-00-M

Resident Fish Substitutions Advisory Committee; Meeting

AGENCY: Resident Fish Substitutions Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Discussion of resident fish substitutions issue paper
- Discussion of productivity analysis issue paper
- Discussion of production investment issue
- Resident fish productivity test area report
- Other
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby annouces a forthcoming meeting of its Resident Fish Substitutions Advisory Committee.

DATE: August 20, 1985, 9:30 a.m.

ADDRESS: The meeting will be held at the Ramada Inn, Room 200, Spokane International Airport, Spokane, Washington.

FOR FURTHER INFORMATION CONTACT: Marty Montgomery, 208-334-2843.

Edward Sheets,

Executive Director.

[FR Doc. 85-19555 Filed 8-15-85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14670; File No. 812-6147]

The Life Insurance Company of Virginia et al.; Exemptive Application

August 9, 1985.

Notice is hereby given that The Life Insurance Company of Virginia (the "Company"), Life of Virginia Separate Account I ("Account"), and Life of Virginia Security Sales, Ltd. ("Security Sales"), referred to collectively herein as "Applicants", 6610 West Broad Street, Richmond, Virginia 23230, filed an application on July 1, 1985, for an order of the Commission, pursuant to sections 11(a) and 11(c) of the Act, approving the terms of certain offers of exchange in connection with certain flexible premium variable life insurance contracts. All interested persons are referred to the application on file with the Commission for a statement of Applicant's representations, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant statutory provisions.

The Company is a stock life insurance company organized under the laws of the Commonwealth of Virginia and is admitted to do business in 47 states and the District of Columbia. The Company is the sponsor-depositor for the Account. The Account, a segregated investment "separate account" of the Company, is registered under the Act as a unit investment trust. The Account meets all conditions set forth in section (a) of Rule 6e-3(T) under the Act and was established for the purpose of funding flexible premium variable life insurance contracts ("the Contracts"), as defined in paragraph (c)(1) of Rule 6e-3(T). Security Sales, a registered broker-dealer, is the principal underwriter of the Contracts. Net payments made on the Contracts are allocated to the only investment subdivision of the Account, Separate Account I, which invests exclusively in shares of the Common Stock Portfolio (currently, the single operating portfolio) of the Life of Virginia Series Fund, Inc. ("the Fund"). The Fund is registered under the Act as an open-end, diversified management investment company and is incorporated under the laws of the Commonwealth of Virginia as a series type company with four classes of capital stock (each consisting of one portfolio). Applicants received an order from the Commission pursuant to section 6(c) of the Act granting exemptions from the provisions of sections 2(a)(35), 26(a), and 27(c)(2) of the Act, and Rule 6e-3(T) thereunder, in connection with the issuance of these existing flexible premium variable life insurance contracts ("Commonwealth One contracts"). (Order, Investment Company Act Rel. No. 14475, April 17, 1985; Notice, Investment Company Act Rel. No. 14428, March 19, 1985.)

Applicants propose to permit contractowners of Commonwealth One contracts to exchange their existing contracts for a new version of the contract ("Commonwealth Two contracts"). Under Commonwealth Two contracts, net premiums may be allocated among the Common Stock, and the newly created Bond, Money Market, and Total Return investment subdivisions of the Account, each of these subdivisions will invest exclusively in newly created separate portfolios of the Fund. Applicants represent that the exchange is designed to allow existing contractowners the opportunity to gain access to additional investment options and that the exchange will have no other economic impact on existing contractowners.

Applicants state that upon approval of Commonwealth Two contracts in a particular state, the Company will cease to offer Commonwealth One contracts in that state. Thereafter, they represent, each contractowner of a Commonwealth One contract in that state will be given written notice of a 90 day right to replace the Commonwealth One contract with a Commonwealth Two contract of equal specified amount and cash value as of the date of exchange. Applicants represent that this will be the functional equivalent of an exchange at "net asset value." Applicants further represent that: (1) The new contract issued will have the same contract and issue date as the existing contract, (2) the contractowner will not pay any additional sales load or administrative charges, (3) the death benefit and cash value will be carried over, (4) the cost of insurance charge deducted under the new contract will be calculated using the same assumptions that would have been used under the existing contract, and (5) there will be no tax consequences to a contractowner as a result of the exchange.

Thus, Applicants assert that the proposed exchange offer is equitable to all contractowners and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Accordingly, Applicants request Commission approval under sections 11(a) and 11(c) of the Act to the extent necessary to permit contractowners to exchange Commonwealth One contracts for Commonwealth Two contracts.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 3, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19598 Filed 8-15-85; 8:45 am]

BILLING CODE 8010-01-M

[34-22305; SR-CBOE-85-25]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Position Limits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 26, 1935, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Note.—Additions are italicized; deletions are bracketed.

Position Limits

Rule 24.4.

(a) In determining compliance with Rule 4.11, option contracts on a market index shall be subject to a contract limitation fixed by the Board, which shall not be larger than [the equivalent of a $300 million position] *15,000 contracts in all series of such market index with the same expiration date on the same side of the market.* [For this purpose a position shall be determined by the product of the current index value times the index multiplier times the number of contracts on the same side of the market.]

(b) No change.

(c) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule change modifies the index option position and exercise limit rule in two respects. First, the limit is set in contracts rather than using a dollar value, to eliminate the possibility that positions and exercise limits would

be reduced by the fortuity of increased value of a market index. Because the current dollar value comfortably allows in excess of 15,000 contracts given the dollar value of the currently traded Exchange index options, 15,000 contracts has been established as the Board's fixed contract limit since trading on index options has commenced, and appears an appropriate number to place in this rule.

Second, the proposed rule change sets the limit for contracts per expiration cycle, rather than in the aggregate, for a given class of index options. This modification is intended to expand the position limits for index options, while being cognizant of the Commission staff's continuing interest in not currently expanding the permissible size of index options positions which can expire on a given expiration cycle. The Exchange understands that the Commission staff continues to have interest in retaining the limit of size of positions for a given expiration cycle due to the potential concerns that certain arbitrage strategies between index options and component stocks might have substantial effects on the closing component stock prices and index values on expiration Fridays, due to unwinding of stock basket positions simultaneously with the close of trading. *See, e.g.*, SR–CBOE–84–05, a rule change proposing a higher aggregate position limit in broad based index options, on which the Commission has deferred action due to the foregoing concern. As the Commission staff is aware, this Exchange has assumed a substantial role in studying the effects of stock basket arbitrage activity, and in attempting to address the phenomenon, including initiating a proposal for additional disclosure language in the Options Clearing Corporation's, Disclosure Document. The Exchange also continues to work with the Commission in developing other remedies.

While the Commission and market participants continue to search for solutions for the described phenomenon, this new proposed rule change maintains the status quo on the position limits on a given expiration. At the same time, this proposed rule change will permit market participants to increase their overall activity in index options. The beneficial consequences of this increased activity will, in particular, be the increase in depth and liquidity of further term index options, since market participants will have separate position limits for each expiration cycle. Moreover, this rule change will thereby encourage useful options trading strategies such as time spreading.

A review of trade volume data in OEX for representative dates in March, April and May 1985 discloses that approximately 90 percent of the trade volume has been in the first and second month options. In April and May 1985, the volume in the first month options has been in the range of 55 to 77 percent of total volume. One reason for this concentration is the inadequacy of the current 15,000 contract position limit. Because of the large size of positions in the near-term options, the current position limit does not permit either institutions or market-makers with large positions to increase materially the size of their positions in further term options.

In OEX, the large size customers and institutional orders are responded to by a relatively small group of market-makers who are, as a consequence, consistently at or near the existing position limit. In some instances, it has been necessary to grant market-makers from this group exemptions from existing position limits. Also, some market-makers have violated the position limit rule. There were, for example, six position limit violations in OEX in April and five in March.

The Exchange believes that the foregoing information discloses a need for position limit relief in index options. First, market-makers who are providing size markets for large size OEX public and institutional orders are constrained by the existing position limits from performing their function of providing depth and liquidity as well as they could with higher limits. Second, establishing separate position limits for each expiration cycle will encourage market participants who maintain large size positions to increase activity in the futher term options, thereby increasing the depth and liquidity of those options. Third, the Exchange understands that many institutions are unable to use OEX effectively because the current position limits are inadequate to serve as a useful hedge for their large equity portfolios.

The proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and, in particular, section 6(b)(5) thereof, in that the rule change will increase market efficiency and market depth and liquidity.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 9, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 9, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19599 Filed 8–15–85: 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 12, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Cigna Corporation
$4.10 Series "C" Cum. Conv. Exchange Preferred $1.00 Par Value (File No. 7-8538)
First Nationwide Financial Corporation
Common Stock, $0.10 Par Value (File No. 7-8539)
Health America Corporation
Common Stock, $0.01 Par Value (File No. 7-8540)
SunTrust Banks, Inc.
Common Stock, $2.50 Par Value (File No. 7-8541)
International Thoroughbred Breeders, Inc.
Common Stock, $0.10 Par Value (File No. 7-8542)
Unicorp American Corporation (New)
Common Stock, $0.01 Par Value (File No. 7-8543)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 3, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19646 Filed 8-15-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 12, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Atlantic Richfield Company
Common Stock, $2.50 Par Value (File No. 7-8535)
Atlantic Richfield Company
$3.00 Cumulative Convertible Preferred Stock (File No. 7-8544)
Atlantic Richfield Company
$2.80 Cumulative Convertible Stock (File No. 7-8545)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 3, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19647 Filed 8-15-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 12, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Floating Point Systems, Inc.
Common Stock, No Par Value (7-8536)
Masco Corporation
Common Stock, $1.00 Par Value (7-8537)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 3, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc 85-19648 Filed 8-15-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22312; File No. SR-Amex-83-27; Amdt. Nos. 2 and 3]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.; Relating To Exchange Equities Specialist Performance and Allocation and Preallocation Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby files for Commission approval of its equities

specialist performance and allocation and reallocation procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

In November 1981, the Commission staff ("Staff") recommended that the Exchange file its evaluation, allocation and reallocation procedures with the Commission for its approval.[1]

In October, 1983, Amex submitted for Commission approval its evaluation, allocation and reallocation procedures.[2] On February 7, 1985, Amex submitted Amendment No. 2 to these procedures which provided for three principal changes to its original filing (SR–Amex–83–27).[3] These changes are: (1) The addition of a new section on procedural safeguards, including an expansion of a section on due process rights with respect to reallocation of securities; (2) an addition to the list of circumstances under which the Allocation Committee may be convened to reallocate securities; (3) a change in the category designation of the four questions in the specialist evaluation questionnaire as well as the addition of new questions on the specialists' dealer function.

Each of the additional provisions included in Amendment No. 2 are set forth below in subsections (1), (2), and (3).[4]

1. *Procedural Safeguards.—Throughout the performance evaluation process, specialist units are made aware of their ratings, and are offered the opportunity to meet with the Performance Committee and its subcommittees. As discussed below, under certain circumstances the Committee may require members to appear before it, pursuant to its authority under Article II, Section 4(b) of the Exchange Constitution. It is also important to note that under the provisions of Article V, Section 1(a) of the Constitution, a member may have the assistance of legal or other counsel in any hearing or investigation conducted by the Performance Committee or its subcommittees.*

—Individual Performance Situations

Each time an individual performance situation is reviewed by a subcommittee, or a full Committee where a matter has been referred to it, the specialist unit involved is notified of the review and is given access to all material to be reviewed.

Members of a specialist unit may, if they wish, meet with the subcommittee or Committee to offer explanations, justifications, or to raise mitigating factors relating to their performance. If the instance under review is especially complex or potentially serious, or if a specialist unit so requests, the Performance Committee may meet with members of the specialist unit more than once.

After an individual performance situation is rated, the rating and the Committee's reasoning is discussed with the specialist unit by a member of the Committee.

—Quarterly Performance Ratings

Final quarterly Performance Committee ratings are reviewed with specialist units after they are conferred, as follows: In the case of units receiving ratings ranging from 1 to 3, at the unit's request; in the case of 4 or 5 rating, which precludes the unit from eligibility for allocations, the unit is requested to meet with a subcommittee of the Performance Committee and Trading Analysis to review the reasons for the rating and discuss measures for improvement. In addition, where a unit which receives a 4 or 5 rating has received poor ratings in previous quarters, follow-up meetings are held as needed during the succeeding quarter to closely monitor remedial measures being taken by the unit.

—Questionnaire

Although the responses to the questionnaire are kept in confidence, Trading Analysis furnishes any explanatory comments received to the units on an anonymous basis. These are furnished in summary form if necessary to protect confidentiality. If a specialist unit requests it, and a responding broker has elected the box which shows his willingness to discuss his comments further, Trading Analysis will arrange a meeting so that the broker may discuss the comments in person with the unit.

—Performance Reallocation

In any case in which the Performance Committee determines that it will consider recommending reallocation of a security or securities as a result of poor performance, it first provides formal notice and an opportunity to be heard to the specialist unit.

Notice to the specialist unit is in writing and contains the specific grounds to be considered as the basis for reallocation. If a specialist unit does not wish to appear, it must sign a waiver of the right to a hearing.

The members of the specialist unit have an opportunity to be heard on the specific grounds to be considered by the Performance Committee, and a written record of any such hearing is maintained. Following any such proceeding, the Performance Committee informs the members of the unit in writing of its decision and reasons. The decision of a majority of the members of the Committee is final, subject to the right of appeal to the Board of Governors, pursuant to Article II, Section 2 of the Exchange Constitution.

—Emergency Reallocations Based on Financial or Operating Considerations

In the case where the Chairman or President of the Exchange, in consultation with all available Floor Governors, determines that a specialist unit cannot be permitted to continue to specialize in one or more of its specialty securities with safety to investors, its creditors, or other members due to its financial or operating condition, the Chairman or President may, on written notice to the specialist unit, request the Allocations Committee to convene to reallocate one or more of the securities on an emergency basis. If time and circumstances permit, the specialist unit will be given an opportunity to appear before the Allocations Committee

[1] See letter from Douglas Scarff, Director, Division of Market Regulation, to Robert Birnbaum, President, Amex, dated November 10, 1981.

[2] These procedures were published for notice and comment in November 1983. See Securities Exchange Act Release No. 20353 (November 4, 1983) 48 FR 51992, (November 15, 1983).

[3] Amex submitted Amendment No. 1 on April 23, 1984. The Division of Market Regulation determined not to publish this amendment for notice and comment but instead to await further clarifying amendments. These clarifications were submitted under Amendment No. 2 to this filing and are being published for notice herein.

[4] In addition to the proposed changes described above, under the "Appeals" section of the filing the Exchange has made the following change: "[P]ursuant to the Board's delegation of authority appeals from either committee are heard *de novo* by the Board's Executive Committee." (The two committees referred to are the Performance Committee and the Allocations Committee).

However, if due to the nature of the emergency and time constraints involved, it is not feasible to provide a prior hearing, the Allocations Committee may proceed with the reallocation and the specialist unit will be granted a full hearing by the Allocations Committee as soon as possible after the reallocation. Any determination by the Allocations Committee may be appealed by the specialist unit to the Board of Governors, pursuant to Article II, Section 2 of the Exchange Constitution. In such an appeal proceeding the specialist will be granted a de novo hearing.

If the conditions which led to the reallocation are corrected or no longer exist, either the Chairman or President in consultation with the Floor Governors, or the specialist unit may request the Allocations Committee to reconvene to consider whether the security or securities subject to the reallocation should be restored to the unit. The Allocations Committee is obligated to consider the equities of all parties involved, and it may, in its discretion, restore the security or securities to the unit or allow the original reallocation to remain undisturbed.

The procedures set forth above in no way abrogate or limit the authority of the Exchange to take action in accordance with the provisons of Article V, Section 3 and Article IV, Section 5 of the Exchange Constitution.

2. *Reallocation Procedures.* An Allocations Committee may be convened to reallocate securities under the following circumstances:

(1) The Performance Committee recommends reallocation on the basis of a failure of a specialist unit to maintain satisfactory performance standerds in a particular instance; as a result of consistently poor performance ratings; or a significant change within a unit, such as by merger or dissolution;

(2) A specialist unit requests to be relieved of a particular security;

(3) Cancellation of a specialist's registration due to disciplinary action;

(4) *A specialist unit has been determined to be in such financial or operating condition that it cannot be permitted to continue to specialize in one or more of its specialty securities with safety to investors, its creditors or other members.*

A new Committee would be convened for each reallocation and is structured in the manner described above for allocations of new issues.[5]

3. *Specialist Unit Evaluation Questionnaire.* The second major evaluation tool used by the Exchange is the Specialist Unit Evaluation Questionnaire for Equities ("Questionnaire").[6] On a quarterly basis, the Exchange distributes the Questionnaire to floor brokers and registered traders, who are requested to evaluate the performance of specialist units based on their day-to-day experience. Members use a 1 to 5 rating system (1=outstanding; 2=good; 3=average; 4=below average; 5=weak) in their evaluations and are instructed to use a rating of 6 (no opinion) when, due to insufficient contact with a particular unit, they are unable to render a judgment as to its capabilities.

Floor members evaluate every specialist unit in each of four categories: *Quality of markets maintained,* [fiduciary] *Professional* responsibility, [specialist unit staff,] communication function, and auction market maintenance *and staffing.* The Questionnaire sets forth an explanation of specialist duties and responsibilities in each category, highlighting particular factors members should consider in responding to each question.

The identity of any specific comments provided by responding members is strictly confidential, although no survey is accepted unless it is signed, for validation purposes. Members assigning a 4 or 5 rating to a unit in any category are required to furnish written comments in support of the rating.

All questions are given equal weight, and a specialist unit's over-all rating is based on the combined evaluations of the responding brokers on all four questions by compiling an average of all responses submitted. This numerical rating (1 to 5) is provided to the Allocation Committee. As is the case with a unit which receives a 4 or 5 Performance Committee rating, a unit which receives a 4 or 5 rating on the Questionnaire in any quarter is precluded from applying for any allocation until its quarterly performance rating has improved. The Performance Committee will consider recommending reallocation where a unit receives a 4 or 5 Questionnaire rating coupled with a similar Performance Committee rating over two consecutive quarters and lesser remedial efforts to improve performance have failed.

In May, 1985, Amex submitted Amendment No. 3 to SR-Amex-83-27 to amend the "Allocations Procedure" section of its filing. The purpose of this amendment is to describe the Amex pilot program which permits a newly listed company to choose the specialist in its stock from a list of seven specialist units selected by the Exchange's Allocation Committee. The Commission recently approved the extension of this pilot program for an additional six month period until December 31, 1985.

Amendment No. 3 reads as follows:

In July 1984, the Exchange instituted on a one year pilot basis a new "modified" procedure which expands a company's participation in the selection of its specialist. (*See* File No. SR-Amex-84-9 and Order Approving Proposed Rule Change, Securities Exchange Act Release No. 21062 (June 18, 1984), 49 FR 25726 (July 22, 1984). Under the new modified procedure, if the company chooses to participate, of all responses submitted. This numerical rating (1 to 5) is provided to the Allocation Committee. As is the case with a unit which receives a 4 or 5 Performance Committee rating, a unit which receives a 4 or 5 rating on the Questionnaire in any quarter is precluded from applying for any allocation until its quarterly performance rating has improved. The Performance Committee will consider recommending reallocation where a unit receives a 4 or 5 Questionnaire rating coupled with a similar Performance Committee rating over two consecutive quarters and lesser remedial efforts to improve performance have failed.

In May, 1985, Amex submitted Amendment No. 3 to SR-Amex-83-27 to amend the "Allocation Procedure" section of its filing. The purpose of this amendment is to describe the Amex pilot program which permits a newly listed company to choose the specialist in its stock from a list of seven specialist units selected by the Exchange's Allocation Committee. The Commission recently approved the extension of this pilot program for an additional six month period until December 31, 1985.

Amendment No. 3 reads as follows:

In July 1984, the Exchange instituted on a one year pilot basis a new "modified" procedure which expands a company's participation in the selection of its specialist. (*See* File No. SR-Amex-84-9 and Order Approving Proposed Rule Change, Securities Exchange Act Release No. 21062 (June 18, 1984), 49 FR 25726 (July 22, 1984). Under the new modified procedure, if the company

[5] The full "Reallocation Procedures" provision was included in Securities Exchange Act Release No. 20353, 48 FR 51992 (November 15, 1983).

[6] A copy of the specialist evaluation questionnaire was included in the filing as Exhibit 3. Copies of the Questionnaire can be obtained in the Commission's Public Reference Room or from the American Stock Exchange.

chooses to participate, the Allocations Committee selects a list of seven specialist units based on the same performance-related criteria it uses for every allocation, and the company selects its specialist form that list. A company remains with its initial specialist for at least 120 days. After that time, but during the first 12 months after listing, the company may request that the stock be reallocated should it become dissatisfied with its specialist. This is the case whether or not a company has participated in the selection process. The company is expected to furnish an explanation of the basis for its dissatisfaction, and if after counseling the company and the specialist unit such a change were still desired, the Exchange would reallocate the stock within 30 days. In any such reallocation, the Exchange would follow the limited participation allocation procedure. Should a company so desire, the Allocations Committee may also select a specialist unit without any company participation. A company may invoke the reallocation request once during the year period following its listing. The modified procedure has been available only to those companies which complete the listing process during the pilot period. The pilot procedure was scheduled to terminate on July 1, 1985; the Commission has extended the pilot program until December 31, 1985. *See* Securities Exchange Act Release No. 22185, June 28, 1985, 50 FR 27872 (July 7, 1985). The Exchange intends to make available to companies listing on or after July 1, 1985, this modified allocations procedure. A company will therefore have three available options: (1) Allocation by the Allocations Committee without any company input, (2) limited participation enabling a company to eliminate from the Allocations Committee's further consideration up to three specialist units from a list of ten units selected by the Committee, or (3) "issuer choice" participation enabling a company to select its specialist unit from a list of seven eligible units selected by the Allocations Committee.

(b) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the Exchange's procedures are designed to promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange's procedures encourage specialists to compete with each other for the allocation of new issues and the retention of those securities in which they are currently registered. The proposed rule change rewards superior performance and thus promotes and enhances competition among Exchange specialists.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should be submitted by September 9, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19644 Filed 8-15-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22317; File No. SR-Amex-85-25]

Self-Regulatory Organizations; Proposed Rule Changes by American Stock Exchange, Inc. Relating to the Exchange's Policy Concerning Specialists' Contacts With Companies Under the Exchange's Equities Allocation Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 9, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is filing its policy regarding specialists' contacts with prospect companies under the Exchange's equities allocation procedure which permits a newly-listed company to participate in the choice of its specialist unit.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

[1] In July, 1984, the Exchange instituted on a one year pilot basis procedures to expand a company's participation in the selection of its specialist. *See* Securities Exchange Act Release No. 21062 (June 18, 1984), 49 FR 25126 (June 22, 1984) (SR-Amex-84-9). The Commission recently approved the extension of this pilot program for an additional six month period until December 31, 1985. *See* Securities Exchange Act Release No. 22185, (June 28, 1985), 50 FR 27872, (July 8, 1985) (SR-Amex-85-24).

most significant aspects of such statement.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In order to reduce the likelihood of specialists developing inappropriate or prohibited relationships with issuers, the Exchange has filed with the Commission certain procedures applicable to all equity specialists. Under these procedures, specialists are required to notify the Exchange's Marketing Department, in advance, of any contacts they wish to initiate with unlisted companies, as well as any significant unplanned discussions with prospective companies promptly after the contact. Once a prospect company has determined to list on the Exchange, specialist units are prohibited from making any direct or indirect independent contact with the company for the purpose of influencing its decision in the choice of a specialist. The prohibition includes the company's investment bankers or other advisors, or any other person in a position to influence the company's management. Once the Exchange's Committee on Equities Allocations ("Allocations Committee") has selected the seven specialists units to be considered by the new listing candidates, those units are prohibited from initiating any direct or indirect communications with company management, the company's investment banker, or any person in a position to influence the company. If the company wishes to interview individual specialist units, the Exchange will arrange for such interviews.

To assure compliance with these restrictions, the Exchange will refer any violations of this policy to the Exchange's Committee on Specialist and Registered Trader Performance ("Performance Committee"), which may declare a unit ineligible for consideration by the Allocations Committee for the specific allocation in question or future allocations for a specified period of time. The Performance Committee also may refer the unit to the Exchange's Compliance Department for appropriate disciplinary action.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 6, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 12, 1985.

[FR Doc. 85–19645 Filed 8–15–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[CM–8/872]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on September 26, 1985 at 9:30 a.m. in the first floor Theater, Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, D.C.

Study Group 4 deals with matters relating to systems of radiocommunications for the fixed service using satellites. The purpose of the meeting will be to discuss preparations for the international meeting of Study Group 4 in September/October, 1985.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520, telephone (202) 632–2592.

Dated: August 5, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85–19630 Filed 8–15–85; 8:45 am]

BILLING CODE 4710–07–M

[CM–8/873]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on September 4, 1985 at 9:30 a.m. in Room 1205, Department of State, 2201 C Street, NW., Washington, D.C.

The purpose of this meeting is to consider contributions to October

meetings of CCITT Study Group XI Working Parties.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C.; telephone (202) 632-5832. All attendees must use the C Street entrance to the building.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

August 8, 1985.

[FR Doc. 85-19628 Filed 8-15-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/874]

Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 8 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet September 4, 1985 in Conference Room 4234-36-38, Federal Aviation Administration Building, 800 Independence Avenue, SW., Washington, D.C. The meeting will begin at 9:30 a.m.

Study Group 8 studies matters relating to systems of radiocommunications and radiodetermination for the mobile services. The purpose of the meeting is to review preparations for the special international meeting of Study Group 8 in July 1986.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to the office of Mr. Richard E. Shrum, State Department, Washington, D.C. 20520; telephine (202) 632-2592.

Dated: August 12, 1985.

William H. Jahn,

Acting Director, Office of International Radio Communications.

[FR Doc. 85-19629 Filed 8-15-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended August 9, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
8-8-85	43336	Midway Airlines (1984), Inc., c/o Joel Stephen Burton, Ginsburg, Feldman and Bress, Suite 900, 1250 Connecticut Avenue, NW., Washington, DC 20036. Application of Midway Airlines (1984), Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests a certificate of public convenience and necessity authorizing scheduled interstate and overseas air transportation of persons, property and mail. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 5, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-19602 Filed 8-15-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket Nos. 38418, 40201, 38570, 38978, 38720, 39783, 38883, 38184, 38571, 41061]

Employee Protection Program Investigations; Continuing Assignments

The Department's Order 85-8-27, issued August 9, 1985, lifted the stay on procedural steps in the Employee Protection Program Investigations (EPP cases) which had been imposed by the CAB orders 84-8-85 and 84-11-54. Accordingly, these investigations will be reactivated and the procedural steps resumed.

The Chief Judge's order of November 22, 1983, consolidated the *Air New England* investigation in Docket 40201 and the *Mackey International Airlines* investigation in Docket 39783 into a single proceeding, and designated the four EPP cases to be heard in the first round of hearings. Pursuant to the Department's order, the processing of the initial four cases will be continued to permit the Department to consider contemporaneously a representative cross-section of the cases. The transfer of functions from CAB to DOT will not affect the prior assignment of cases to particular Administrative Law Judges.

Accordingly, this notice is to advise that the following proceedings continue to be assigned to the Administrative Law Judges indicated:

1. *Air New England/Mackey International Employee Protection Program Investigation*, Docket 40201, to Chief Administrative Law Judge Elias C. Rodriguez.

2. *Braniff International Airways Employee Protection Program Investigation*, Docket 38978, to Administrative Law Judge Ronnie A. Yoder.

3. *Pan American World Airways Employee Protection Program Investigation*, Docket 38883, to Administrative Law Judge John M. Vittone.

4. *United Air Lines Employee Protection Program Investigation*, Docket 38571, to Administrative Law Judge William A. Kane, Jr.

The remaining EPP investigations instituted by CAB will be deferred in

accordance with Order 85–8–27 until after the four lead cases are decided.

1Entered this 12th day of August, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85–19603 Filed 8–15–85; 8:45 am]

BILLING CODE 4910–62–M

Fitness Determination of Resort Commuter, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination: Order 85–8–31, order to show cause.

SUMMARY: The Department of Transportation is proposing to find that Resort Commuter, Inc. is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses

All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than August 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Catherine Terry, Special Authorities Division, Department of Transportation, 400 7th SW., Washington, DC 20590 (202) 755–3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–8–31 is available from the Documentary Services Division, Room 4107, 400 7th Street SW., Washington, DC 20590. Persons outside the metropolitan area may send a postcard request for Order 85–8–31 to that address.

Dated: August 12, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–19604 Filed 8–15–85; 8:45 am]

BILLING CODE 6910–62–M

Federal Aviation Administration

Advisory Circular; Installation of Turbosuperchargers in Small Airplanes with Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft advisory circular (AC) availability and request for comments.

SUMMARY: This AC provides information and guidance concerning an acceptable means of showing compliance with § 23.909 of Part 23 of the Federal Aviation Regulations (FAR), for the installation of turbosuperchargers in small airplanes with reciprocating engines.

DATE: Commenters must identify File AC 23.909–X; Subject: Installation of Turbosuperchargers in Small Airplanes with Reciprocating Engines, and comments must be received on or before October 15, 1985.

ADDRESSES: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard F. Yotter, Aerospace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374–6941, or FTS 758–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE–110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

Exhaust gas-driven turbosuperchargers are available for use with reciprocating engines to increase takeoff and maximum continuous power available at sea level and altitude, to maintain maximum continuous or cruise power at altitudes, and to provide a source of air to pressurize the cabin of a small airplane. Section 23.909 contains requirements for approval of turbosuperchargers and refers to design standards required in Part 33. The applicant is expected to substantiate, through suitable engineering investigations and/or tests, that the turbosupercharged engine installation complies with the applicable airworthiness requirement for the airplane in which the installation is made. The turbosupercharger should be approved as part of the engine, and compliance shown with the applicable portions of Part 33.

Issued in Kansas City, Missouri, August 5, 1985.

Don Jacobsen,

Acting Manager, Aircraft Certification Division.

[FR Doc. 85–19511 Filed 8–15–85; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket No. S–772]

Lykes Bros. Steamship Co., Inc.; Application To Provide Privilege Service to the Canary Islands in Conjunction With Its Existing Services on TR 13 and T/A 4

Lykes Bros. Steamship Co., Inc. (Lykes), by application dated August 1, 1985, has requested an amendment to Appendix A of Operating-Differential Subsidy Agreement, Contract No. MA/MSB–451 in order to permit calls at the Canary Islands on a privilege basis in conjunction with its Trade Route No. 13 U.S. Gulf and South Atlantic/Mediterranean service and in conjunction with its Trade Area No. 4 Great Lakes/Mediterranean, India, Persian Gulf and Red Sea service.

Lykes states that this request is being made in order to permit Lykes to better serve certain exporters who are shipping mining equipment from the Great Lakes area to the Canary Islands under existing and proposed mining projects. In support of its request, Lykes notes that there is currently no regular U.S.-flag liner service to the Canary Islands from the U.S. Lykes intends to handle this cargo on its Trade Area No. 4 service from the Great Lakes during the Great Lakes shipping season. While the Lakes are closed, Lykes intends to move this cargo either via the Gulf or the South Atlantic on its Trade Route No. 13 service.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street, SW, Washington DC 20590. Comments must

be received no later than 5:00 P.M. on August 30, 1985.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Dated: August 12, 1985.

Murray A Bloom,

Assistant Secretary.

[FR Doc. 85-19595 Filed 8-15-85; 8:45 am]

BILLING CODE 4910-81-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 159
Friday, August 16, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

1

FEDERAL HOME LOAN MORTGAGE CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 32827, Wednesday, August 14, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 1:00 p.m., Thursday, August 15, 1985.

PLACE: 1776 G Street, NW., Washington, DC, Conference Room 8–C.

STATUS: Closed.

CHANGE IN MEETING: 2:30 p.m.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013, (202) 789–5097.

Date Sent to Federal Register: August 14, 1985.

Maud Mater,

Secretary.

[FR Doc. 85–19730 Filed 8–14–85; 2:54 pm]

BILLING CODE 6720-02-M

federal register

Friday
August 16, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications To General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Kansas: KS84–4052	Aug. 25, 1984.
Michigan: MI84–5026	Dec. 21, 1984.
New Jersey: NJ85–3031	Aug. 2, 1985.
New York: NY85–3040	July 26, 1985.
Pennsylvania:	
PA82–3010	Mar. 15, 1982.
PA83–3051	Nov. 25, 1983.
PA84–3002	Feb. 10, 1984.
PA81–3091	Dec. 28, 1981.
PA82–3012	Mar. 5, 1982.
PA84–3003	Feb. 10, 1984.
PA85–3017	Apr. 5, 1985.
PA85–3030	June 21, 1985.
PA82–3011	Mar. 12, 1982.
PA82–3028	Sept. 10, 1982.
PA83–3052	Nov. 25, 1983.
PA84–3004	Feb. 17, 1984.
PA84–3042	Dec. 14, 1984.
PA84–3000	Jan. 13, 1984.
PA84–3037	Oct. 5, 1984.
Virginia: VA85–3020	Apr. 6, 1985.
Wisconsin: WI84–5028	Dec. 21, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Nebraska: NE83–4025 (NE85–4033).	Apr. 1, 1983.

Signed at Washington, DC, this 9th day of August 1985.

James L. Valin,
Assistant Administrator.

BILLING CODE 4510-27-M

DECISION #KS84-4052-MOD.#4 49FR33780-August 24, 1984 Sedgwick County, Kansas	Basic Hourly Rates	Fringe Benefits
ADD:		
METAL BUILDING ASSEMBLERS	$7.65	

DECISION NO. MI84-5026 - Mod. #7 (49 FR 49812 - December 21, 1984) Statewide, Michigan	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters:		
Zone 1	$16.69	$1.70 +22%

DECISION NO. NJ85-3031 MOD. NO. 1 (50 FR 31459 - August 2, 1985) Bergen, Essex, Hudson (excluding Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
ZONE 1B:		
(Heavy & Highway Construction):		
Group 1	$13.20	3.30
Group 2	13.40	3.30
Group 3	13.70	3.30
Group 4	13.90	3.30
Group 5	14.15	3.30
Group 6	15.70	3.30
(Free Air Tunnel Jobs):		
Group 1	15.95	3.30
Group 2	14.25	3.30
Group 3	14.10	3.30
Group 4	13.60	3.30

DECISION NO. NY85-3040 MOD. #1 (50 FR 30594, July 26, 1985) ALBANY, COLUMBIA, GREENE, FULTON, MONTGOMERY, RENSSELAER, SARATOGA, SCHENECTADY, SCHOHARIE, WASHINGTON	Basic Hourly Rates	Fringe Benefits
PLUMBERS & STEAMFITTERS:		
Area 1	16.72	3.15
Area 2	15.11	4.35
Area 3	17.20	3.10
Area 4	15.15	2.60

DECISION NO. PA82-3010 MOD. NO. 17 (47 FR 9684 - March 15, 1982) Clinton, Centre, Huntingdon, Fulton, & Mifflin Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers:		
Huntingdon & Mifflin Counties	$17.515	4.75
Plumbers & Steamfitters:		
Centre, Mifflin & Fulton Counties	17.85	2.82
Clinton County	16.06	3.64
Sheet metal workers:		
Centre, Huntingdon, Fulton & Mifflin Counties	16.73	4.92

DECISION NO. PA83-3051 MOD. NO. 8 (48 FR 53264 - November 25, 1983) Franklin County, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers	17.515	4.75
Plumbers	17.85	2.82
Sheet metal workers	16.73	4.92

DECISION NO. PA84-3002 MOD. NO. 9 (49 FR 5295 - February 10, 1984) Adams & York Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	17.91	2.84
Ironworkers	17.515	4.75

DECISION NO.PA84-3002, MOD. NO. 9, Cont'd.	Basic Hourly Rates	Fringe Benefits
Laborers:		
General Laborers	$10.74	1.92
Operator of Jackhammer (etc.)	10.94	1.92
Wagon drill operator	11.04	1.92
Handling of all materials (etc.)	10.99	1.92
Laborers assisting tile (etc.)	10.79	1.92
Handling & using dynamite	11.07	1.92
Caisson work (top men)	10.99	1.92
Caisson work (bottom men)	11.19	1.92
Mixer man	11.14	1.92
Plumbers & Steamfitters	17.85	2.82
Sheet metal workers	16.73	4.92

DECISION NO. PA81-3091 MOD. NO. 13 (46 FR 62761 - December 28, 1981) Greene, Somerset, and Potter Counties, Pa.	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Electricians:		
Potter County	13.06	3.97
LABORERS:		
Potter County		
Class 1	13.60	23%
Class 2	13.85	23%
Class 3	14.40	23%

MODIFICATIONS P. 3

DECISION NO. PA82-3012	Basic Hourly Rates	Fringe Benefits
MOD. NO. 14		
(47 FR 9681 - March 5, 1982)		
Columbia, Montour, & Snyder County, Pennsylvania		
CHANGE:		
Asbestos Workers		
Snyder County	$17.91	2.04
Electricians:		
Montour County in its entirety: North of U. S. Highwsy #522 & Selesgrove Twp. in Snyder County; and Remainder of Columbia County	15.65	3%+ 1.70
Ironworkers:		
Montour & Snyder Cos.	17.515	4.75
LABORERS:		
Columbia County		
Class 1	10.19	2.90
Class 2	10.59	2.90
Class 3	10.29	2.90
Class 4	10.44	2.90
Montour County		
Class 1	9.45	1.50
Class 2	9.60	1.50
Snyder County		
Group 1	10.70	1.68
Group 2	11.17	1.68
Group 3	10.10	1.68
Group 4	11.37	1.68
LINE CONSTRUCTION:		
Lineman, dynamite man, heavy equipment operator	16.04	1.25+ 3/8%
Winch truck operator	11.34	1.25+ 3/8%
Groundman	10.05	1.25+ 3/8%
Painters: Brush	12.55	2.70
" Tapers	13.21	2.70
" Structural Steel	14.21	2.70
Piledrivermen	15.97	7.76+d
Plasterers:		
Snyder & Montour Cos.	14.20	
Plumbers & Steamfitters	17.85	2.82
ADD:		
Laborers:		
Snyder County		
Fork Lift	12.12	1.71

DECISION NO. PA84-3003	Basic Hourly Rates	Fringe Benefits
Mod. No. 4		
(49 FR 5297 - February 10, 1984)		
Lancaster County, Pennsylvania		
CHANGE:		
Asbestos Workers	$17.91	2.04
Elevator Constructors	15.90	3.29+ a+b
Elevator Constructors Helpers	70%JR	3.29+ a+b
Elevator Constructors Helpers (Prob.)	50%JR	
Ironworkers:		
Western part of County	17.515	4.75
Laborers	10.74	1.92

DECISION NO. PA85-3017	Basic Hourly Rates	Fringe Benefits
MOD. NO. 1		
(50 FR 11702 - April 5, 1985)		
Carbon, Monroe County including Tobyhanna Army Depot and Pike County, Pennsylvania		
CHANGE:		
Laborers:		
Zone 1		
Class 1	12.80	3.07
Class 2	12.95	3.07
Class 3	13.20	3.07

DECISION NO. PA85-3030	Basic Hourly Rates	Fringe Benefits
MOD. NO. 1		
(50 FR 25852 - June 21, 1985)		
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania		
CHANGE:		
Ironworkers:		
Structural, Ornamental & Reinforcing	17.515	4.75
Piledrivermen	15.97	7.76+d
ADD:		
Laborers:		
Forklift Laborers	12.12	1.71

MODIFICATIONS P. 4

DECISION NO. PA82-3011	Basic Hourly Rates	Fringe Benefits
MOD. NO. 13		
(47 FR 10963 - March 12, 1982)		
Bradford, Tioga & Union Counties, Pennsylvania		
CHANGE:		
Ironworkers:		
Structural, Ornamental & Reinforcing		
Union County	$17.515	4.75

DECISION NO. PA82-3028	Basic Hourly Rates	Fringe Benefits
MOD. # 12		
(47 FR 29972 - September 10, 1982)		
Elk, Forest, McKean, & Warren Counties, Pennsylvania		
CHANGE:		
Laborers:		
Group 1	13.60	23%
Group 2	13.85	23%
Group 3	14.40	23%
Group 4	13.60	23%

DECISION NO. PA83-3052	Basic Hourly Rates	Fringe Benefits
MOD. NO. 5		
(48 FR 51264 - November 25, 1983)		
Lawrence & Mercer Counties, Pennsylvania		
CHANGE:		
Landscaping Laborers:		
Class 1	10.77	26%
Class 2	11.19	26%

DECISION NO. PA84-3004	Basic Hourly Rates	Fringe Benefits
MOD. NO. 7		
(49 FR 6209 - February 17, 1984)		
Armstrong, Beaver, Butler, Fayette, Indiana, Washington, Allegheny & Westmoreland Counties, Pa.		
CHANGE:		
LABORERS		
Landscaping		
Class 1	10.77	26%
Class 2	11.19	26%

DECISION NO. PA84-3042	Basic Hourly Rates	Fringe Benefits
MOD. NO. 4		
(49 FR 48888 - December 14, 1984)		
Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford, & Venango Counties, Pennsylvania		
CHANGE:		
LABORERS		
Zone 3		
Class 1	13.60	23%
Class 2	13.85	23%
Class 3	14.40	23%
Landscaping		
Zone 1		
Class 1	10.77	26%
Class 2	11.19	26%
Sheet metal workers		
Zone 2	16.73	4.92
Roofers		
Zone 1	16.48	2.28

MODIFICATIONS P. 5

DECISION #PA84-3000 - Mod. #11 (49 FR 1851 - January 13, 1984) Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, & Westmoreland Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
OMIT:		
TRUCK DRIVERS HEAVY & HIGHWAY CONSTRUCTION ISSUED IN MOD. #10, 50 FR - 30586 - 7-26-85:		
ADD:		
TRUCK DRIVERS SCHEDULE ATTACHED TO INCLUDE ALL THIRTY THREE COUNTIES IN PENNSYLVANIA		
Pick-up Farm tractor (when pulling or hauling), Helpers, Warehouseman	$ 9.00[b]	19%
Single Axle Fork lift	11.00[b]	19%
Tri-axle Tandem axle & Tractor pulled Trailers	12.00[b]	19%
Specialty Vehicles Heavy off-the-road equipment (rated 45 tons and over), Lowboys	13.48[b]	19%

TRUCK DRIVERS (Cont'd.):	Basic Hourly Rates	Fringe Benefits
Partsmen will be paid on basis of vehicle utilized.		
Dual Purpose Truck (When load has been loaded or unloaded with truck winch loading, hauling & unloading) will be paid according to axle of truck.		
FOOTNOTE 'b':		
Travel, with vehicle, to and from project site and company's office or yard will be at the federally established minimum wage rate of $ 3.35 per hour when a full eight hours of job site work is scheduled. (First trip in and last trip out daily, to a maximum of one hour each trip per day). Fringe benefit payments for this work will be based upon project site rate for similar vehicle.		

(7)

MODIFICATIONS P. 6

DECISION NO. PA84-3037 MOD. NO. 2 (49 FR 39436 - October 5, 1984) Lebanon, Lycoming, Northumberland, Schuylkill & Sullivan Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Ironworkers		
Zone 1	$17.515	4.75
Laborers		
Zone 2		
Class 1	9.45	1.50
Class 2	9.60	1.50
Zone 5		
Class 1	12.87	2.90
Class 2	13.27	2.90
Class 3	13.07	2.90
Class 4	13.19	2.90
Zone 3		
Class 1	10.70	1.68
Class 2	11.17	1.68
Class 3	10.10	1.68
Class 4	11.37	1.71
Zone 4		
Class 1	9.45	1.20
Class 2	9.65	1.20
Zone 1		
Class 1	10.20	1.25
Class 2	10.30	1.25
Plumbers:		
Zone 3	17.85	2.82
Roofers:		
Zone 3		
Shingle, Slate, and Tile Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools and equipment; clean-up debris	14.15 6.25	2.42 2.42
All Other work	20.12	3.83+e
Mechanic II (for all other work) - handles and transports all materials, tools and equipment; clean-up debris	8.25	3.83+e
Steamfitters		
Zone 3	17.85	2.82
Sheet metal workers		
Zone 1	16.73	4.92

DECISION NO. PA84-3037 (cont'd):	Basic Hourly Rates	Fringe Benefits
ADD:		
Laborers:		
Zone 3		
Class 5		
Fork Lift Operator	12.12	1.71

(8)

DECISION #WI84-5029-MOD#3 (49 FR 49827-December 21, 1984) Bayfield & Douglas Counties Wisconsin	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SHEET METAL WORKERS:		
Building	17.15	2.75
Residential	10.98	2.75

DECISION NO. VA85-3020-MOD. #3 (50 FR 13706-April 6, 1985) HENRICO AND THE Independent City of Richmond	Basic Hourly Rates	Fringe Benefits
CHANGE:		
SHEET METAL WORKERS (All)	14.50	2.32

(9)

	Basic Hourly Rates	Fringe Benefits

(10)

SUPERSEDEAS DECISION

STATE: Nebraska COUNTY: Lancaster
DECISION NO.: NE85-4033 DATE: Date of Publication
Supersedes Decision No. NE83-4025, dated April 1, 1983, in 48 FR 14313
DESCRIPTION OF WORK: Building Projects (does not include single family homes & apartments up to & including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS/MECHANICAL INSULATORS	$ 7.00	
BRICKLAYERS	10.06	
CARPENTERS	9.23	
CEMENT MASONS	8.18	
DRYWALL FINISHERS	9.72	.62
DRYWALL HANGERS	9.34	.61
ELECTRICIANS	10.42	3.80
GLAZIERS	14.27	1.38
INSULATORS (BATT & BLOWN)	6.51	
LABORERS:		
Unskilled	5.85	
Mason tenders	5.95	
LANDSCAPE LABORERS	4.90	
PAINTERS	$ 9.38	
PLASTERERS	12.78	
PLUMBERS & PIPEFITTERS	10.25	2.76
ROOFERS	8.99	
SHEET METAL WORKERS	9.38	2.13
SPRINKLER FITTERS	16.67	3.38
TILE SETTERS	12.70	
TRUCK DRIVERS	6.54	
POWER EQUIPMENT OPERATORS:		
Backhoes	9.28	
Concrete finishing machines	7.50	
Cranes	11.11	
Front end loaders	8.66	
Motor graders	10.36	
Rollers	8.50	
Tractors	6.75	
Scrapers	9.52	

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 85-19319 Filed 8-15-85; 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
August 16, 1985

Part III

Department of Education

Office of Educational Research and Improvement

34 CFR Parts 76, 768, 769, 770, 771, and 772

Library Services and Construction Act; State-Administered Program and Direct Grant Programs for Indian Tribes and Hawaiian Natives, Foreign Language Materials Acquisition, and Literacy; Final Regulations

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

34 CFR Parts 76, 768, 769, 770, 771, and 772

Library Services and Construction Act; State-Administered Program and Direct Grant Programs for Indian Tribes and Hawaiian Natives, Foreign Language Materials Acquisition, and Literacy

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is issuing final regulations governing the Library Services and Construction Act State-Administered Program and final regulations governing the direct grant programs under the Act. These regulations implement the Library Services and Construction Act (LSCA) Amendments of 1984 (Title I of Pub. L. 98–480, 98 Stat. 2236 (1984)). These regulations include information on the types of program activities the Secretary supports with funds appropriated under the LSCA and the selection criteria for evaluating applications under the direct grant programs.

EFFECTIVE DATE: These regulations will take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Klassen, Chief, State and Public Library Services Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Brown Building, Room 613, Washington, DC 20202–1630. Telephone: (202) 254–9664.

SUPPLEMENTARY INFORMATION:

Background

The LSCA Amendments of 1984 (Title I of Pub. L. 98–480), enacted on October 17, 1984, authorize Federal assistance through fiscal year 1989 for Titles I through IV of the Act, and through fiscal year 1988 for Titles V and VI of the Act.

The Act was originally enacted as the Library Services Act in 1956 (Pub. L. 84–597, 70 Stat. 293). In 1964 authorization for spending on construction projects was added, to be followed in 1966 by authorization for spending on interlibrary cooperation projects and projects for the institutionalized and the physically handicapped. In 1970, major amendments were made to the Act including the enactment of provisions for strengthening State library administrative agencies and metropolitan libraries which serve as national or regional resource centers, the removal of matching requirements for interlibrary cooperation, and the streamlining of State plan procedures.

The 1977 amendments to the Act extended the Act for five years and, among other things, established the requirement that Federal funds spent to cover administrative costs be matched with State or other non-Federal funds, as well as providing for special assistance to major urban resource libraries under certain circumstances.

The Omnibus Budget Reconciliation Act (Pub. L. 97–35, 95 Stat. 357 (1981)) extended Title I (Library Services) and Title III (Interlibrary Cooperation) through fiscal year 1984. No funds were authorized to be appropriated for Title II (Public Library Construction) for fiscal years 1982, 1983 and 1984. No provision was made for Title IV (Older Readers Services). Therefore, the final regulations published March 30, 1984, included no provisions relating to Titles II and IV.

Summary of Major Amendments

(1) The Library Services and Construction Act State-Administered Program

(a) *Amendments to Title I (Library Services).* Sections 109, 110, and 111 of Pub. L. 98–480 contain amendments to Title I of the Act. Section 109, for example, expands the specific purposes of Title I grants. Thus, a State may use funds under Title I for the establishment, extension, and improvement of public library services to meet the needs of geographic areas or groups of persons in the State who lack those services or for whom current services are inadequate. Other types of projects a State may carry out with funds under Title I include: making library services accessible to individuals who, by reason of distance, residence, handicap, age, literacy level, or other disadvantage, are unable to receive the benefits of public library services regularly made available to the general public; assisting libraries to serve as community information referral centers; and assisting libraries in providing literacy programs for adults and school dropout in cooperation with other agencies and organizations, if appropriate. (See § 770.10.)

Section 110 of Pub. L. 98–480 amends section 102(a)(1) of the Act by adding that Federal funds under Title I may be used to assist libraries to serve as community centers for information and referral. A provision is also added, by section 111 of Pub. L. 98–480, to ratably reduce the level of fiscal effort which a State must maintain for State institutional library services, and for library services, to the physcially handicapped and institutionalized individuals, to the extent that Federal allocations to a State are reduced. Section 111 of the LSCA Amendments of 1984 also (1) requires a State to describe how it will develop programs for the elderly which may include one or more of seven different activities listed in section 111; and (2) describes the manner in which funds for programs for handicapped individuals will be used to make library services more accessible to such individuals. (See §§ 770.10 and 770.40(c)(2).)

Although Title IV of the Act and the regulations would provide funding directly to Indian tribes and organizations primarily serving and representing Hawaiian natives, the House Committee indicated its intent than Indian tribes coordinate library service programs with State libraries in order to insure maximum benefit from Federal library funds. (See H.R. Rep. No. 165, 98th Cong., 1st Sess. 7 (1983).)

(b) *Amendments to Title II (Public Library Construction).* Under section 112 of the LSCA Amendments of 1984, the Federal share of the cost of construction of any project assisted under Title II cannot exceed one-half of the total cost of the project. This section also contains a provision entitling the Department to recover a portion of its equity interest within 20 years after completion of the construction of any library facility constructed in part with funds made available under Title II, if the recipient or its successor in title or possession ceases or fails to be a public or nonprofit institution or the facility ceases to be used as a library facility. However, the Secretary has the option of determining whether there is good cause for releasing the institution from this obligation. (See §§ 770.41(b) and 770.42.)

(c) *Amendments Affecting Both Titles I and II.* Section 108 of Pub. L. 98–480 allows a State to expend funds received under Titles I and II for administrative costs in connection with programs and activities carried out under Title I, II, and III. Administrative expenditures under these titles for any fiscal year may not exceed the greater of 6 percent of the sum of the amounts allotted to each State under Titles I and II for any fiscal year, or sixty thousand dollars ($60,000). (See § 770.43.)

(d) *Amendments to Title III (Interlibrary Cooperation and Resource Sharing).* Section 113 of Pub. L. 98–480 amends Title III of the Act and changes

its title from "Interlibrary Cooperation" to "Interlibrary Cooperation and Resource Sharing". Pursuant to section 113, States must now include in their long-range and annual programs a Statewide resource sharing plan which is directed toward eventual compliance with the new section 304 (Resource Sharing) of the Act. (See §§ 770.12(b)(1)(ii) (A) and (B), 770.23(c)(1)(i), and 770.24(d).)

In reference to direct grant funding under Title IV, the House Committee expressed its belief that Indian tribes should participate in resource sharing to the extent possible. (See H.R. Rep. No. 165, 98th Cong., 1st Sess. 7, (1983).)

(e) *Other Changes to the Library Services and Construction Act State-Administered Program Regulations.* A new clause is added to these regulations prohibiting the inclusion of in-kind contributions among the amounts the State declares that it will have available for expenditure for maintenance of effort purposes under paragraph (b)(5)(i) of § 770.24. This addition is not due to any amendment to the Act, but rather to the fact that section 7(a) of the Act refers to sums from State or local sources, or both, "available for expenditure" and "actually expended".

These regulations also contain a new clause in § 770.50 to make clear that 34 CFR 76.401(b) of EDGAR, which exempts State agencies from having to offer an opportunity for a hearing under certain State-administered programs, does not apply to public library construction grants. This is due to the fact that under section 203 of the Act, with respect to a project for construction of public library facilities, a State must provide an opportunity for a hearing to every local or other public agency whose application for a subgrant for construction has been denied.

(2) The Library Services and Construction Act Library Services for Indian Tribes and Hawaiian Natives Program

Pub. L. 98-480 deletes Title IV (Older Readers Services) and introduces a new Title IV entitled "Library Services for Indian Tribes" in its place. The new Title IV was prompted by the findings of the Congress that: (1) most Indian tribes receive little or no funds under the State-administered Titles I, II, and III of the Act; (2) Indian tribes and reservations are generally considered to be separate nations and seldom are eligible for direct library allocations from States; and (3) the vast majority of Indians living on or near reservations do not have access to adequate libraries or have access to no libraries at all.

Under Title IV, for the purpose of making grants to Indian tribes there will be available 1.5 percent of the amounts appropriated for Titles I, II, and III for each fiscal year. For the purpose of making grants to organizations primarily serving and representing Hawaiian natives (Hawaiian native organizations), there will be available 0.5 percent of the amounts appropriated for Titles I, II, and III for each fiscal year. The Secretary makes basic grants from these separate allotments to Indian tribes and Hawaiian native organizations which have submitted approved applications under section 403 (Applications for Library Services to Indians) of the Act. After consultation with the Secretary of the Interior, the Secretary has determined that for purposes of this program, an Indian tribe means an Indian tribe, band, nation or other organized group or community certified by the Secretary of the Interior as being eligible for Federal special programs and services. Any allotted funds for which an Indian tribe or Hawaiian native organization has not applied, or has applied but has not qualified, will be reallocated by the Secretary among Indian tribes and Hawaiian native organizations which have submitted approved plans under section 404 (Plans for Library Services to Indians) of the Act as special projects grants. In accordance with sections 403 and 404 of the Act, these final regulations implement: (1) The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program, and (2) The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

(3) The Library Services and Construction Act Foreign Language Materials Acquisition Program

Title V (Foreign Language Materials Acquisition) of the Act, established under section 115 of the LSCA Amendments of 1984, authorizes a new program of grants to State and local public libraries for the acquisition of foreign language materials.

Under Title V, State and local public libraries may submit grant applications to the Department for the acquisition of foreign language materials. The term "foreign language materials" is defined in these regulations to mean "library materials for various age levels in a language other than English." Recipients of grants under Title V will be selected on a competitive basis, and grants awarded are not to exceed fifteen thousand dollars ($15,000) for any fiscal year.

(4) The Library Services and Construction Act Library Literacy Program

Title VI (Library Literacy Programs) of the Act, established under section 115 of the LSCA Amendments of 1984, authorizes a new program of grants to State and local public libraries for the support of library literacy programs. Under Title VI, grants to State public libraries are to be used for coordinating and planning library literacy programs and for making arrangements to train librarians and volunteers for carrying out these programs. Grants to local public libraries are to be used for: promoting the use of voluntary services of individuals, agencies, and organizations in providing literacy programs; acquiring materials for literacy programs; and providing for the use of library facilities for literacy programs.

The Library Literacy Program was prompted by the finding of the Congress that the role of public libraries has expanded to include literacy training for illiterate and functionally illiterate adults. Literacy activities otherwise permissible under Title I (Library Services) of the Act, such as assisting libraries in providing literacy programs for adults and school dropouts, should not be in conflict with the purposes of the Library Literacy Program.

It was also the recommendation of the House Conference Committee (H.R. Rep. No. 1075, 98th Cong., 2d Sess. 21 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)) that applicants for funding show that any proposed project is not in conflict with the State plan required under section 6 of the Act, and that any proposed project demonstrate evidence of cooperation and coordination with other service providers, as appropriate, including State adult education officials or their local representatives.

Recipients of grant awards under the Library Literacy Program will be selected on a competitive basis and no grant for any fiscal year shall exceed twenty-five thousand dollars ($25,000).

(5) Definition Under the Library Services and Construction Act Amendments of 1984, Pub. L. 98-480

No new definitions were added under section 103 to the State-Administered Program (Titles I through III); however, an insertion was made to the definition of "construction" in section 3(2) of the Act. (See § 770.11.) In the definition of "State institutional library services" at section 3(9) of the Act, the words in parentheses were added to clarify the

types of handicapping conditions permissible under State institutional library services.

(See §§ 770.10 and 770.40 (c)(1).)

Section 103 of Pub. L. 98-480 adds two new definitions to the Act, those of "Indian tribe" and "Hawaiian native", which are provided in § 771.4(b) and cross-referenced in § 772.4(b).

Other Information

Readers' attention is drawn to the provision in the Education Department General Administrative Regulations (EDGAR) requiring a State to make available for public inspection "all State plans and related official materials". (34 CFR 76.106(a)). In the case of the Library Services and Construction Act State-Administered program, the State plan and all related materials—as described in § 770.21—includes: (1) The basic State plan covering all three types of grants provided under the program, (2) the long-range program that addresses each type of grant for which the State is applying, and (3) the annual program for each type of grant for which the State is applying.

Significant Differences Between the NPRM and the Final Regulations

On May 16, 1985, the Secretary published in the **Federal Register** the Notice of Proposed Rulemaking (NPRM) for the Library Services and Construction Act—State-Administered Program, and the Direct Grant Programs for Indian Tribes and Hawaiian Natives, Foreign Language Materials Acquisition, and Library Literacy (50 FR 20522). During the period allowed for public comments in response to the proposed regulations, comments and questions were received from 39 persons including Members of the Congress.

The provisions of these final regulations are substantially the same as those of the NPRM. However, after careful consideration of the public comments on the proposed regulations, the Secretary has made some changes.

In §§ 768.4(c), 769.4(c), 770.4(c), 771.4(b), 772.4(b), the definition of "Library materials" has been expanded to include "computer software" as so many public libraries are now purchasing and circulating computer software.

Sections 770.11(b)(4) (Architectural services) and § 770.11(b)(5) (Acquisition of land) have been deleted. Sections 770.11(b)(6) and 770.11(b)(7) have been renumbered as §§ 770.11(b)(4) and 770.11(b)(5), respectively, and § 770.11(b)(5) has been changed so that it now reads: "Any combination of activities referred to in paragraphs (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land)". Section 771.10(c) and 772.10(c) have been changed in a manner consistent with the changes made to § 770.11(b).

Section 768.4(a) now references "State library administrative agency" and § 768.4(c) now includes the following: "State public library" means, "for this program, the State library administrative agency" as defined in section 3(10) of the Act.

The word "reading" was unintentionally omitted from the definition of the term "limited English-speaking proficiency" in the proposed regulations and has been included under § 770.4(c) of these final regulations for the LSCA State-Administered Program.

Section 770.10(b)(10)(ii), has been changed to read "library services to the physically handicapped" in order to distinguish between the three possible "handicapping conditions" projects for which library services grant funds may be permissively expended. Other projects for the "handicapped" and "State institutional library services" projects are covered in § 770.10(b)(4)(i)(B), and § 770.10(b)(10)(i), respectively, of the regulations.

The words "but are not restricted to" in proposed § 770.12(b) have been deleted because section 302(a) of the statute limits the permissible uses of Title III funds to two types of activities.

A clarification has been made in § 770.23(a)(1) to the effect that the "long-range program" is "a comprehensive description of the State's identified present and projected library needs," rather that just a description of the State's needs with regard to library services, public library construction, and interlibrary cooperation and resource sharing as contained in the proposed regulations. A conforming change has been made in § 770.21(b).

A clarification has been made in § 770.22(c) to the effect that the State shall give an assurance in the basic State plan that the State will give priority to programs and projects designed to carry out the objectives of section 6(b)(4) of the Act, rather than just an assurance that the State will give priority to carry out one or more of the objectives as stated in the proposed regulations. This should not however be construed to mean that priority may be given only to those projects designed to carry out all of the listed objectives.

A change has been made in § 770.24(a)(1) so that in its annual program each State is required to provide: "A description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year . . ."

Clarification has been made in § 770.24(c) so that it now reads: "In the case of an application for a Public Library Construction grant, the State shall also include in its annual program a description of how the State plans to use funds that year, consistent with the long-range program, for approved construction projects in areas of the State lacking the library facilities necessary to provide adequate library services."

A change has been made in § 770.40(b) that now reads: "The State shall provide the difference between—(1) The cost of carrying out the State's annual program; and (2) The Federal share of these costs, as specified in section 7(b) of the Act."

Section 770.40(c)(1) has been changed so that it now provides that the amount spent from Federal, State, and local sources for State institutional library services, and for library services for physically handicapped and institutionalized individuals, must be no less than the amount spent from those sources for those services during the second year preceeding the year for which the grant is made.

Other Changes

Certain other technical changes have been made. Certain technical revisions have been made to the selection criteria in §§ 768.31, 769.31, and 772.31. No substantive changes are intended, and no amendments to the applications are necessary.

Comments and Responses

A summary of comments received and the Secretary's responses to those comments can be found in the Appendix to these final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 (1982) and to the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. (Please note that Federally recognized Indian tribal governments are not subject to Executive Order 12372.)

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 768

Education, Foreign language—library, Grant programs—education, Libraries, Reporting and recordkeeping requirements.

34 CFR Part 769

Education, Education of disadvantaged, Grant programs—education, Literacy program—libraries, Reporting and recordkeeping requirements.

34 CFR Part 770

Aging—libraries, Construction—libraries, Correctional institutions—libraries, Education, Education of disadvantaged, Grant programs—education, Handicapped, Libraries, Mental health programs—libraries, Penal institutions—libraries, Prisons—libraries, Reporting and recordkeeping requirements.

34 CFR Part 771

Construction—libraries, Grant programs—education, Hawaiian natives—libraries, Indian tribes—libraries, Reporting and recordkeeping requirements.

34 CFR Part 772

Construction—libraries, Grant programs—education, Hawaiian natives—libraries, Indian tribes—libraries, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Numbers: 84.034 (Library Services); 84.154 (Public Library Construction); 84.035 (Interlibrary Cooperation and Resource Sharing); 84.163 (Basic Grants to Indian Tribes and Hawaiian Native Program and Special Projects Grants to Indian Tribes and Hawaiian Natives Program); 84.166 (Library Services and Construction Act Foreign Language Materials Acquisition Program); and 84.167 (Library Services and Construction Act Library Literacy Program))

Dated: August 12, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. Part 768 is added to read as follows:

PART 768—THE LIBRARY SERVICES AND CONSTRUCTION ACT FOREIGN LANGUAGE MATERIALS ACQUISITION PROGRAM

Subpart A—General

Sec.

768.1 The Library Services and Construction Act Foreign Language Materials Acquisition Program.
768.2 Who is eligible to apply for a grant under the Foreign Language Materials Program?
768.3 What regulations apply to the Foreign Language Materials Program?
768.4 What definitions apply to the Foreign Language Materials Program?

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

768.30 How does the Secretary evaluate an application?
768.31 What selection criteria does the Secretary use?

Authority: Library Services and Construction Act, Pub. L. 91-600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98-480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 768.1 The Library Services and Construction Act Foreign Language Materials Acquisition Program.

Under the Library Services and Construction Act Foreign Language Materials Acquisition Program—referred to in this part as the Foreign Language Materials Program—the Secretary provides Federal financial assistance for the acquisition of foreign language materials.

(20 U.S.C. 371)

§ 768.2 Who is eligible to apply for a grant under the Foreign Language Materials Program?

State public libraries and local public libraries are eligible to apply for grants under the Foreign Language Materials Program.

(20 U.S.C. 371)

§ 768.3 What regulations apply to the Foreign Language Materials Program?

The following regulations apply to the Foreign Language Materials Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 768.

(20 U.S.C. 371)

§ 768.4 What definitions apply to the Foreign Language Materials Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Library service
Public library
Public library services
State library administrative agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Definitions that apply to this part.* The following definitions also apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91-600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98-480).

"Foreign language materials" means library materials for various age levels in a language other than English.

"Library materials" means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

"State public library means, for this program, the State library administrative agency.

(20 U.S.C. 351 *et seq.*)

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 768.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 768.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 371(b))

§ 768.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(f) *Need and anticipated benefits.* (20 points)

(1) The Secretary reviews each application to determine the need for the proposed project and the anticipated benefits of the project.

(2) The Secretary considers—

(i) The extent to which the applicant has surveyed or otherwise studied the geographic area for which it provides public library services to determine the need for library materials in a particular foreign language or particular foreign languages;

(ii) The extent to which the applicant has received requests for materials in that language or those languages;

(iii) Whether the proposed project would duplicate in the geographic area other collections of library materials available to the general public in the same foreign language or languages; and

(iv) The benefits likely to be derived by the general public or a particular segment of the public as a result of the proposed project.

(20 U.S.C. 371(b))

2. Part 769 is added to read as follows:

PART 769—THE LIBRARY SERVICES AND CONSTRUCTION ACT LIBRARY LITERACY PROGRAM

Subpart A—General

Sec.

769.1 The Library Services and Construction Act Library Literacy Program.
769.2 Who is eligible to apply for a grant under the Library Literacy Program?
769.3 What regulations apply to the Library Literacy Program?
769.4 What definitions apply to the Library Literacy Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

769.10 For what types of projects does the Secretary provide assistance to State public libraries?
769.11 For what types of projects does the Secretary provide assistance to local public libraries?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

769.30 How does the Secretary evaluate an application?
769.31 What selection criteria does the Secretary use?

Authority: Library Services and Construction Act, Pub. L. 91-600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98-480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 769.1 The Library Services and Construction Act Library Literacy Program.

Under the Library Services and Construction Act Library Literacy Program—referred to in this part as the Library Literacy Program—the Secretary provides Federal financial assistance for literacy projects.

(20 U.S.C. 375(a))

§ 769.2 Who is eligible to apply for a grant under the Library Literacy Program?

State public libraries and local public libraries are eligible to apply for grants under the Library Literacy Program.

(20 U.S.C. 375(a))

§ 769.3 What regulations apply to the Library Literacy Program?

The following regulations apply to the Library Literacy Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 769.

(20 U.S.C. 375(a))

§ 769.4 What definitions apply to the Library Literacy Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Public Library
State library administrative agency.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Applicant
Application
Budget
Department
EDGAR
Equipment
Facilities
Grant
Project
Secretary
State
Supplies

(c) *Definitions that apply to this part.* The following definitions also apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91-600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98-480).

"Adult" means an individual in any State who has exceeded the maximum age for compulsory schooling in that State.

"Functionally illiterate adult" means an adult whose minimal skills in reading, writing, or comprehension or in performing basic arithmetical computations precludes the individual from functioning in society without assistance from others.

"Illiteracy" means the inability to read, write, or comprehend or to perform basic arithmetical computations.

"Library materials" means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

"Literacy" means the ability of an individual to read, write, and comprehend and to perform basic arithmetical computations.

"Literacy program" means a project or activity designed to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computations.

"State public library" means, for this program, the State library administrative agency.

(20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§769.10 For what types of projects does the Secretary provide assistance to State public libraries?

(a) The Secretary provides assistance to State public libraries for projects designed to do either or both of the following:

(1) Coordinate and plan library literacy programs.

(2) Arrange for the training of librarians and volunteers to carry out these types of programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Assisting libraries to provide literacy programs for adults in cooperation with other agencies and organizations, if appropriate.

(2) Providing in-service training for librarians and volunteers in the use of appropriate library materials for illiterate or functionally illiterate adults.

(3) Assisting or training librarians and volunteers in extending library literacy programs to groups and individuals that may not be adequately served by existing programs. Examples of these types of persons include—

(i) The handicapped;

(ii) The institutionalized;

(iii) Older Americans; and

(iv) Other disadvantaged individuals.

(20 U.S.C. 357(b))

§769.11 For what types of projects does the Secretary provide assistance to local public libraries?

(a) The Secretary provides assistance to local public libraries for projects designed to do one or more of the following:

(1) Promote the use of the voluntary services of individuals, agencies, and organizations in providing literacy programs.

(2) Acquire library materials for literacy programs.

(3) Use library facilities for literacy programs.

(b) These projects may include, but are not restricted to, one or more of the following types of activities:

(1) Promoting the use of volunteers in disseminating information about literacy programs.

(2) Training volunteers to serve local literacy programs.

(3) Acquiring library materials designed to improve the literacy of illiterate and functionally illiterate adults.

(4) Conducting literacy programs for adults.

(5) Encouraging other libraries in the community to volunteer the use of their facilities for literacy programs.

(20 U.S.C. 357(c))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§769.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 769.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 375(d))

§769.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial of ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (20 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (10 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to he project.

(2) The Secretary considers the extent to which—

(i) The facilities that the application plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(f) *Cooperation and coordination.* (20 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to cooperate and coordinate its proposed project with other parties providing similar or related services.

(2) The Secretary considers—

(i) The extent to which the applicant—

(A) Has identified other providers of literacy-related services, including State or local adult education agencies or both, as appropriate;

(B) Has identified the services provided by these parties; and

(C) Has communicated with officials of these parties or their representatives; and

(ii) The specific measures of cooperation and coordination the applicant has proposed.

(20 U.S.C. 357(d); H. Conf. Rept. No. 98-1075, 98th Cong. 2d Session (1984), p. 21)

3. Part 770 is revised to read as follows:

PART 770—THE LIBRARY SERVICES AND CONSTRUCTION ACT STATE-ADMINISTERED PROGRAM

Subpart A—General

Sec.

770.1 The Library Services and Construction Act State-Administered Program.
770.2 Who is eligible to apply for a grant under the State-Administered Program?
770.3 What regulations apply to the State-Administered Program?
770.4 What definitions apply to the State-Administered Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

770.10 What types of projects may be funded under Library Services grants?
770.11 What types of projects may be funded under Public Library Construction grants?
770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

Subpart C—How Does a State Apply for a Grant?

770.20 What must a State do to receive a grant under the State-Administered Program?
770.21 What must a State plan include?
770.22 What must a State include in a basic State plan?
770.23 What must a State include in a long-range program?
770.24 What must a State include in an annual program?

Subpart D—How Does the Secretary Make a Grant to a State?

770.30 What special conditions does the Secretary apply in considering an application for a grant?

Subpart E—What Conditions Must Be Met by a State and Its Subgrantees?

770.40 What are a State's financial obligations under a Library Services grant?
770.41 What are a State's financial obligations under a Public Library Construction grant?
770.42 What other financial obligations does a recipient have under a Public Library Construction grant?
770.43 What administrative costs are allowable under this program?

Subpart F—What Are the Administrative Responsibilities of a State and Its Subgrantees?

770.50 Under what circumstances must a State provide an applicant with an opportunity for a hearing?

Authority: Library Services and Construction Act, Pub. L. 91-600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98-480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 770.1 The Library Services and Construction Act State-Administered Program.

Under the Library Services and Construction Act State-Administered Program—referred to in this part as the State-Administered Program—the Secretary provides Federal funds to assist States to—

(a) Extend and improve public library services;

(b) Construct and renovate public libraries; and

(c) Develop and strengthen interlibrary cooperation and resource sharing.

(20 U.S.C. 351, 353, 355b, 355e)

§ 770.2 Who is eligible to apply for a grant under the State-Administered Program?

Under the State-Administered Program the following parties are eligible to apply:

(a) States are eligible to apply to the Secretary for—

(1) Library Services grants under title I of the Act;

(2) Public Library Construction grants under title II of the Act; and

(3) Interlibrary Cooperation and Resource Sharing grants under title III of the Act.

(b)(1) Public libraries are eligible to apply to their respective States for subgrants under each type of grant specified in paragraph (a) of this section.

(2) In the case of Interlibrary Cooperation and Resource Sharing grants, a State may also permit other types of libraries to apply for subgrants.

(20 U.S.C. 351d, 352, 355a, 355e)

§ 770.3 What regulations apply to the State-Administered Program?

The following regulations apply to the State-Administered Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 770.

(20 U.S.C. 351 *et seq.*)

§ 770.4 What definitions apply to the State-Administered Program?

(a) *Definitions in the Act.* The following terms used in this part are defined in section 3 of the Act:

Annual program
Basic State plan
Indian tribe
Hawaiian native
Library service
Library services for the physically handicapped

Long-range program, except that this program may cover a period of not fewer than three nor more than five years.

(20 U.S.C. 351d)

Major urban resource library
Public library
Public library services
State Advisory Council on Libraries
State institutional library services
State library administrative agency

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77.1:

Acquisition
Applicant
Application
Department
EDGAR
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Project
Public
Secretary
State
Subgrant
Subgrantee

(c) *Definitions that apply to this part.* The following definitions apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91-600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98-480).

"Community information referral center" means a center that provides information and makes referrals to link people in need of services to appropriate resources.

"Disadvantaged persons" means persons whose socio-economic or educational deprivation or whose cultural isolation from the general community may preclude them from benefiting from public library services to the same extent as the general community benefits from these services.

"Handicapped" means, for purposes of this program, mentally retarded, hearing impaired, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or otherwise health impaired.

"Illiteracy" means the inability of an individual to read, write, or comprehend or to perform basic arithmetical computations.

"Interlibrary cooperation" means the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers.

"Interlibrary Cooperation and Resource Sharing grants" means Federal financial assistance provided by the Secretary under title III of the Act.

"Library materials" means books, periodicals, newspapers, documents, pamphlets photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

"Library Services grants" means Federal financial assistance provided by the Secretary under title I of the Act.

"Limited English-speaking proficiency," where used with reference to individuals, means individuals who—

(1) (i) Were not born in the United States or whose native tongue is a language other than English;

(ii) Come from environments where a language other than English is dominant; or

(iii) Are American Indian and Alaskan Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Because of the reason(s) listed in paragraph (1) (i), (ii), or (iii) of this definition, have sufficient difficulty speaking, reading, writing, or understanding the English language to be denied the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in society. (See section 703 (a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 3223).)

"Literacy" means the ability of an individual to read, write, and comprehend and to perform basic arithmetical computations.

"Literacy program" means a project or activity designed to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computations.

"Public Library Construction grants" means Federal financial assistance provided by the Secretary under title II of the Act.

(20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 770.10 What types of projects may be funded under Library Services grants?

(a) The Secretary awards Library Services grants to assist projects designed to plan for, establish, extend, or improve public library services.

(b) The types of projects referred to in paragraph (a) of this section may include, but are not restricted to, the following:

(1) Extending public library services to areas and populations that lack these services.

(2) Improving public library services to ensure that these services are adequate to meet the needs of specific areas and populations.

(3)(i) Making public library services accessible to individuals who, because of a disadvantage, are unable to benefit from public library services regularly made available to the general public.

(ii) These disadvantages include, but are not restricted to, distance, residence, handicap, age, literacy level, and limited English-speaking proficiency.

(4)(i) Improving State and local public library services for—

(A) The elderly; and

(B) Handicapped, institutionalized, and other disadvantaged individuals.

(ii) Services for the elderly may include, but are not restricted to, the following:

(A) Training librarians to work with the elderly.

(B) Conducting special library programs for the elderly, particularly for the elderly who are handicapped.

(C) Purchasing special library materials for use by the elderly.

(D) Paying salaries for elderly persons who work in libraries as assistants on programs for the elderly.

(E) Providing to the elderly home visits by librarians and other library personnel.

(F) Establishing programs to notify the elderly about the availability of library services.

(G) Furnishing transportation to enable the elderly to have access to library services.

(5) Adapting public library services to meet particular needs of individuals.

(6) Assisting libraries to serve as community information referral centers.

(7)(i) Assisting libraries in providing literacy programs for adults and school dropouts.

(ii) If possible and appropriate, applicants shall propose to conduct these literacy programs in cooperation with other agencies and organizations.

(8) Strengthening the capacity of the State library to meet the needs of the people of the State with regard to library services, facilities, and resources.

(9) Supporting and expanding the services of major urban resource libraries that meet the demands of individual users and other libraries.

(10) Establishing, expanding, and operating programs to provide—

(i) State institutional library services;

(ii) Library services to the physically handicapped; and

(iii) Library services for the disadvantaged in urban and rural areas.

(11) Strengthening metropolitan libraries that serve as national or regional resource centers.

(12) Increasing public library services or access to these services through effective use of technology.

(20 U.S.C. 351(a), 351a, 351 note (b)(4), 352, 353)

§ 770.11 What types of projects may be funded under Public Library Construction grants?

(a) The Secretary awards Public Library Construction grants to assist projects designed to carry out the activities in paragraphs (b) and (c) of this section.

(b) As used in this part, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3)(i) Initial equipment for any building referred to in paragraphs (b)(1) and (b)(2) of this section.

(ii) As used in paragraph (b)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (b)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraphs (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land).

(c) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(20 U.S.C. 351a(2), 355a, 355c; EO 11490, as amended)

§ 770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

(a) The Secretary awards Interlibrary Cooperation and Resource Sharing grants to assist projects designed to enable various types of libraries to share resources and materials.

(b) These types of projects include only the following:

(1)(i) Planning for, and taking other steps leading to the development of, cooperative library networks.

(ii) Planning may include—

(A) Development of a statewide resource sharing plan directed toward eventual compliance with section 304 of the Act; or

(B) One or more of the items listed in section 304(c) of the Act.

(2)(i) Establishing, expanding, or operating local, regional, or interstate cooperative library networks.

(ii) As used in paragraph (b)(2)(i) of this section, "cooperative library networks" are those networks designed to—

(A) Provide for the systematic and effective coordination of the resources of various types of libraries, including school, public, academic, and special libraries and information centers; and

(B) Improve supplementary services for the special clientele served by these types of libraries.

(20 U.S.C. 351(a), 355e, 355e–1(a), 355e–2)

Subpart C—How Does a State Apply for a Grant?

§ 770.20 What must a State do to receive a grant under the State-Administered Program?

(a) In order to receive a grant under the State-Administered Program, a State must—

(1) Establish a State Advisory Council on Libraries; and

(2) After consulting with the council, submit to the Secretary by the various dates established by the Secretary the three parts of a State plan, as described in § 770.21.

(b) The Secretary does not consider the other parts of the plan until the Secretary has approved the basic State plan.

(20 U.S.C. 351d(a))

§ 770.21 What must a State plan include?

A State plan must consist of the following three parts:

(a)(1) A basic State plan, as described in § 770.22, covering a five-year period.

(2) The State shall submit one basic plan to cover all three types of grants provided under this program:

(i) Library Services grants.

(ii) Public Library Construction grants.

(iii) Interlibrary Cooperation and Resource Sharing grants.

(b) (1) A long-range program, as described in § 770.23, covering a period of not fewer than three years and not more than five years.

(2) The State library administrative agency shall develop the long-range program—

(i) With the advice and assistance of the State Advisory Council on Libraries; and

(ii) In consultation with the Secretary.

(3) The State shall—

(i) Submit a long-range program that provides a comprehensive description of the State's identified library needs and a description of the activities to be taken toward meeting those needs supported with the assistance of the LSCA State-Administered Program;

(ii) Review the program each year;

(iii) Revise the program each year according to changing needs and the results of evaluations and surveys; and

(iv) Submit the revised program to the Secretary.

(c) An annual program, as described in § 770.24, for each type of grant for which the State is applying.

(20 U.S.C. 351d(a))

§ 770.22 What must a State include in a basic State plan?

A State shall include the following in its basic State plan:

(a) Assurance that the State library administrative agency—

(1) Will administer or supervise the administration of all programs and projects in the State assisted under the State-Administered Program;

(2) Has the fiscal and legal authority and capability to administer or supervise the administration of programs and projects assisted under the State-Administered Program;

(3) Has established or will establish policies, priorities, criteria, and procedures necessary to implement the program in the State;

(4) (i) Will make the reports the Secretary reasonably requires to—

(A) Carry out the Secretary's functions under the program; and

(B) Determine the extent to which funds provided under the program have been effective in carrying out the purposes of the program;

(ii) Will include in these reports, if requested by the Secretary, reports of evaluations made under the State plan; and

(iii) Will make the reports in the form and containing the information reasonably required by the Secretary; and

(5) (i) Will keep the records the Secretary finds necessary to assure the correctness and verification of the reports referred to in paragraph (a) (4) of this section; and

(ii) Will give the Secretary access to the records as the Secretary finds necessary.

(b) Assurances that—

(1) Any funds paid to the State under a long-range program and an annual program will be expended only for the purposes for which the funds have been authorized and appropriated; and

(2) The State has adopted the necessary fiscal control and fund accounting procedures to assure proper disbursement of, and to account for, Federal funds paid—

(i) To the State under the State-Administered Program; and

(ii) By the State to any other agency under the program.

(c) An assurance that the State will give priority to programs and projects designed to carry out the following objectives:

(1) To improve access to public library resources and services for the least served populations in the State, including—

(i) Projects for individuals with limited English—speaking proficiency;

(ii) Projects for individuals who are handicapped; and

(iii) Projects in urban and rural areas.

(2) To serve the elderly.

(3) To combat illiteracy.

(4) To increase library services and access to services through effective use of technology.

(20 U.S.C. 351a(11), 351d(b))

(Approved by the Office of Management and Budget under control number 1850–0528.)

§ 770.23 What must a State include in a long-range program?

(a) A State shall include the following in a long-range program:

(1) A comprehensive description of the State's identified present and projected library needs.

(2) A plan for meeting those identified needs with Federal funds made available through the appropriate type of grant under the State-Administered Program.

(3) (i) The State's policies, priorities, criteria, and procedures for administering this type of grant and appropriate subgrants under the State-Administered Program.

(ii) A description of how the State plans to implement the priorities in § 770.22(c).

(4) A description of the State's policies and procedures regarding each of the following:

(i) The periodic evaluation of the effectiveness of projects supported under this type of grant.

(ii) The appropriate dissemination of—

(A) The results of the evaluation referred to in paragraph (a)(4)(i) of this section; and

(B) Other information pertaining to these projects.

(iii) The coordination of projects assisted under this type of grant with similar library programs and projects operated by other libraries, institutions, and agencies in the State.

(b) In the case of an application for a Public Library Construction grant, the State shall also include in its long-range program the policies and procedures to be followed by the State library administrative agency in providing an opportunity for a hearing to a local or other public agency whose application for a subgrant is denied.

(c) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include the following in its long-range program:

(1) (i) A statewide resource sharing plan directed toward eventual compliance with the provisions of section 304 of the Act.

(ii) In developing the plan, the State library agency, with the assistance of the State Advisory Council on Libraries, shall consider recommendations from current and potential participating institutions in interlibrary cooperation and resource sharing projects authorized under the Act.

(2) (i) An identification of interlibrary cooperation and resource sharing objectives to be achieved during the period covered by the basic State plan and the long-range program.

(ii) These objectives may include, but are not restricted to, one or more of the items listed in section 304(c) of the Act.

(20 U.S.C. 351(a), 351a(12), 355c, 351d(a)(d); 355e, 355e–2, 355e–3)

(Approved by the Office of Management and Budget under control number 1850–0528.)

§ 770.24 What must a State include in an annual program?

(a) A State shall include the following in an annual program:

(1) A description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year with regard to library services, public library construction, or interlibrary cooperation and resource sharing, as appropriate.

(2) A description of how these projects and activities would—

(i) Be consistent with purposes specified in the Act and in §§ 770.10, 770.11, or 770.12, as appropriate;

(ii) Fulfill the objectives of the State's long-range program or the update of the long-range program; and

(iii) Meet the needs identified by the State in the long-range program.

(3) A description of the criteria the State plans to use in allocating funds.

(4) (i) A demonstration that the manner in which the State proposes to carry out the annual program is consistent with the policies, criteria, priorities, and procedures specified in the long-range program or the update of the long-range program.

(ii) In meeting this requirement, the State shall address, among other items, policies and procedures regarding evaluations, dissemination, and coordination, as described in § 770.23(a)(4).

(5) A description of how proposed projects and activities are to be based on the results of evaluations undertaken according to the long-range program.

(6) A demonstration that proposed projects and activities would meet the assurance given by the State in its basic State plan to implement the priorities specified in § 770.22(c), if appropriate.

(7) The amount of Federal funds the State plans to spend to carry out its administrative functions under the grant, as specified in § 770.43.

(b) In the case of an application for a Library Services grant, the State shall

also include the following in its annual program:

(1) The criteria the State plans to use to ensure that the State meets the financial obligations specified in § 770.40(c).

(2) A description of how the State plans to allocate funds to support and expand library services of major urban resource libraries if—

(i) The sum appropriated for the year exceeds the amount specified in section 102(c)(1) of the Act; and

(ii) The State has one or more cities with populations of at least 100,000 individuals.

(3) A description of how the State plans to use funds for projects and activities for the elderly.

(4) A description of how the State plans to use funds to make library services more accessible to handicapped persons.

(5) (i) To enable the Secretary to make a determination of payment under section 7(a) of the Act (Payments), a statement of the amounts the State will have available for expenditure for the proposed projects and activities during the period covered by the annual program from—

(A) State sources; and

(B) Local sources.

(ii) The State may not include in-kind contributions among the amounts the State declares it will have available for expenditure under paragraph (b)(5)(i) of this section.

(c) In the case of an application for a Public Library Construction grant, the State shall also include in its annual program a description of how the State plans to use funds that year, consistent with the long-range program, for approved construction projects in areas of the State lacking the library facilities necessary to provide adequate library services.

(d) In the case of an application for an Interlibrary Cooperation and Resource Sharing grant, the State shall also include in its annual program a description of how the proposed projects and activities would meet the requirements of the Act and of § 770.23(c) with respect to—

(1) The statewide resource sharing plan; and

(2) The interlibrary cooperation and resource sharing objectives identified in the long-range program.

(20 U.S.C. 351, 351a(13), 351d(a), (b)(4); 351e(a)(1), 354, 355c, 355e-2, 355e-3)

(Approved by the Office of Management and Budget under control number 1850-0528.)

Subpart D—How Does the Secretary Make a Grant to a State?

§ 770.30 What special conditions does the Secretary apply in considering an application for a grant?

(a) The Secretary considers an applicant's long-range program and annual program for a grant under this part only if the Secretary has approved the applicant's basic State plan.

(b)(1) In the case of an application for a Library Services grant, the Secretary makes a grant to a State only if the Secretary has determined that the State will have the following amounts available for expenditure for the projects and activities proposed in its annual program during the period covered by the annual program:

(i) From combined State and local sources an amount—

(A) Sufficient to enable the State to receive not less than its minimum allotment under the Act; and

(B) Not less than the total amount actually expended from State and local sources for services provided under a Library Services grant during the second year preceding the year covered by the annual program.

(ii) From State sources an amount not less than the total amount actually expended from State sources for services provided under a Library Services grant during the second year preceding the year covered by the annual program.

(2) The requirements in paragraph (b)(1) of this section do not apply to an application from the Trust Territory of the Pacific Islands.

(20 U.S.C. 351e, 354, 355c, 355e-2)

Subpart E—What Conditions Must Be Met by a State and Its Subgrantees?

§ 770.40 What are a State's financial obligations under a Library Services grant?

A State that receives a Library Services grant shall meet the following financial obligations:

(a) The State shall meet the maintenance-of-effort requirement in § 770.30(b).

(b) The State shall provide the difference between—

(1) The cost of carrying out the State's annual program; and

(2) The Federal share of these costs, as specified in section 7(b) of the Act.

(c) (1) For State institutional library services, and library services to the physically handicapped and institutionalized individuals, the State shall spend from Federal, State, and local sources an amount not less than the amount the State spent from those sources for those services during the second year preceding the year for which the Secretary makes the grant.

(2) If the Federal allocation for the State's Library Services grant is reduced, the Secretary informs the State that the amount the State is required to spend under paragraph (c)(1) of this section is ratably reduced.

(d) If the amount of the grant obligates the State to allocate funds to support and expand library services of major urban resource libraries (see sections 102(a)(3) and (c) of the Act and § 770.24(b)(2)), the State may not reduce the amount it pays to an urban resource library below the amount the State paid to that library in the preceding year.

(20 U.S.C. 351(e)(b), 354)

§ 770.41 What are a State's financial obligations under a Public Library Construction grant?

(a) A State that receives a Public Library Construction grant shall provide, from State or local sources or both, the difference between—

(1) The costs of projects financed under the grant for that year; and

(2) The Federal share of these costs, as specified in section 7(b) of the Act.

(b) In case of any individual project under a Public Library Construction grant, at least one half of the total cost must be supplied by State or local sources or both.

(20 U.S.C. 351e(b), 355b(b))

§ 770.42 What other financial obligation does a recipient have under a Public Library Construction grant?

(a) Unless released from the obligation by the terms of paragraph (c) of this section, a recipient of Federal financial assistance under a Public Library Construction grant—or the recipient's successor in title or possession—shall repay to the United States on request an amount as specified in paragraph (b) of this section if, within 20 years of the completion of construction of the library facility—or part of a facility—for which the assistance was received—

(1) The recipient or its successor ceases or fails to be a public or nonprofit institution; or

(2) The facility ceases to be used as a library facility.

(b) The amount the recipient or its successor may be obligated to repay is an amount that equals—

(1) The value of the facility or part of the facility at the time of the occurrence specified in paragraph (a)(1) or (a)(2) of this section; multiplied by

(2) The ratio of—

(i) The amount of the Federal assistance under the grant or subgrant; to

(ii) The cost of the facility or part of the facility for which the assistance was received.

Example. In 1974 a local public library completed a project to enlarge its reading room. The project had been assisted by a subgrant from the State under a Public Library Construction grant. The total cost of the project was $300,000; the subgrant had amounted to $120,000 a ratio of 2 to 5 or 40 percent of the cost.

In 1986 the local library moves to another district, and the facility for which it received assistance in 1974 ceases to be used as a library facility. It is determined that the part of the facility for which assistance was received has a current market value of $400,000.

The United States is entitled to recover from the local public library an amount equal to 40 percent of the current market value of the facility or portion of the facility assisted with Federal funds; that is, 40 percent of $400,000 or $160,000.

(c) The Secretary may decide, for good cause, to release the recipient from its obligation under paragraph (a) of this section.

(d) The provisions of this section apply to any facility constructed at any time with assistance under Title II of the Library Services and Construction Act.

(20 U.S.C. 355b)

§ 770.43 What administrative costs are allowable under this program?

(a) A State library administrative agency may spend funds received under a Library Services grant and funds received under a Public Library Construction grant to carry out its administrative functions under a Library Services grant, a Public Library Construction grant, and an Interlibrary Cooperation and Resource Sharing grant.

(b) The total amount the agency may spend to carry out its administrative functions under all of these grants during any year may not exceed the amount specified in section 8 of the Act (Administrative Cost).

(c) The agency may spend the funds for administrative costs in connection with the following activities:

(1) Administration of the State plan, including obtaining the services of consultants.

(2) Statewide planning for and evaluation of library services.

(3) Dissemination of information concerning library services.

(4) Activities of the State Advisory Council on Libraries and of any other advisory groups and panels necessary to assist the State library administrative agency in carrying out its functions.

(20 U.S.C. 351f, 353(b))

Subpart F—What Are the Administrative Responsibilities of a State and Its Subgrantees?

§ 770.50 Under what circumstance must a State provide an applicant with an opportunity for a hearing?

(a)(1) In the case of a Public Library Construction grant, if a State denies funds to a local or other public agency that applies for a subgrant for construction of public library facilities, the State library administrative agency shall give the local or other public agency an opportunity for a hearing.

(2) The provision in 34 CFR 76.401(b) (which exempts State agencies from having to offer an opportunity for a hearing under certain State-administered programs) does not apply to Public Library Construction grants.

(b) In providing opportunity for a hearing, the State library administrative agency shall follow the appropriate policies and procedures included in the State's long-range program for the Public Library Construction grant.

(20 U.S.C. 355c)

4. Part 771 is added to read as follows:

PART 771—THE LIBRARY SERVICES AND CONSTRUCTION ACT BASIC GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

Subpart A—General

Sec.

771.1 The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program.
771.2 Who is eligible to apply for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program?
771.3 What regulations apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?
771.4 What definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

771.10 What types of projects may be funded under this program?

Subpart C—How Does One Apply for a Grant?

771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

Subpart D—How Does the Secretary Make an Award?

771.30 What factors does the Secretary consider in making an award?

Subpart E—What Conditions Must Be Met by a Grantee?

771.40 What are the financial obligations of a tribe that supports a public library system?

Authority: Library Services and Construction Act, Pub. L. 91-600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98-480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 771.1 The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Basic Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations and for Hawaiian natives.

(20 U.S.C. 351, 351c (c)(1), (d)(1), (d)(2); 361)

§ 771.2 Who is eligible to apply for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program?

The following are eligible to apply for grants under the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(a) Indian tribes, as defined in § 771.4(b).

(b) Organizations—

(1) Primarily serving and representing Hawaiian natives; and

(2) Recognized by the Governor of the State of Hawaii.

(20 U.S.C. 351, 351a (15), (16); 351c(d)(1), 361)

§ 771.3 What regulations apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

(a) The following regulations apply to an Indian tribe or an organization primarily serving and representing Hawaiian natives that applies for a grant under the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in this Part 771.

(b) An organization primarily serving and representing Hawaiian natives that applies for a grant under this part is also subject to 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 351 *et seq.*)

§ 771.4 What definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program?

The following definitions apply to the Basic Grants to Indian Tribes and Hawaiian Natives Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Contract
Department
EDGAR
Grant
Grantee
Project
Public
Secretary

(b) *Definitions that apply to this part.* The following definitions also apply to this part:

"Act" means the Library Services and Construction Act (Pub. L. 91-600), as amended by the Library Services and Construction Act Amendments of 1984 (Pub. L. 98-480).

"Hawaiian native" means an individual having an ancestor, who prior to 1778, was a native in the area that now comprises the State of Hawaii.

"Indian tribe.

(1)(i) This term means an Indian tribe, band, nation, or other organized group or community determined by the Secretary to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(ii) After consultation with the Secretary of the Interior, the Secretary has determined that, for purposes of this program, an Indian tribe means an Indian tribe, band, nation, or other organized group or community certified by the Secretary of the Interior as being eligible for Federal special programs and services.

(2) The term includes an Alaskan Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act.

"Library materials."

(1) This term means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped.

(2) (i) The term also includes restricted collections of cultural materials of Indian tribes or Hawaiian natives, as appropriate.

(ii) "Restricted collection" means library materials not placed in general circulation.

(20 U.S.C. 351a, 362(c))

"Library service" means the performance of all activities of a library relating to—

(1) The collection and organization of library materials; and

(2) Making the materials and information of a library available to users.

"Public library."

(1) This term means a library that—

(i) Serves free of charge all residents of a community, district, or region; and

(ii) Receives its financial support in whole or in part from public funds.

(2) The term also includes a research library; that is, a library that—

(i) Makes its services available to the public free of charge;

(ii) Has extensive collections of books, manuscripts, and other materials that are—

(A) Suitable for scholarly research; and

(B) Not available to the public through public libraries;

(iii) Disseminates humanistic knowledge through services to readers, fellowships, educational and cultural programs, publication of significant research, and other activities; and

(iv) Is not an integral part of an institution of higher education.

"Public library services" means library services furnished by a public library free of charge.

(20 U.S.C. 351 *et seq.*)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 771.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to an Indian tribe to conduct one or more of the following projects:

(1) Assessment of tribal library needs.

(2) In-service or preservice training of Indians as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Indians to have access to library services.

(7) Conduct of special library programs for Indians.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(9) Contracts to—

(i) Provide public library services to Indians living on or near reservations; or

(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.

(b) The Secretary provides Federal financial assistance under this program to an organization primarily serving and representing Hawaiian natives to conduct one or more of the following projects:

(1) Assessment of library needs of Hawaiian natives.

(2) In-service or preservice training of Hawaiian natives as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Hawaiian natives to have access to library services.

(7) Conduct of special library programs for Hawaiian natives.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(c) As used in paragraphs (a)(8) and (b)(8) of this section, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3) (i) Initial equipment for any building referred to in paragraphs (c)(1) and (c)(2) of this section.

(ii) As used in paragraph (c)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (c)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraphs (c)(1) through (c)(4) of this section (including architect's fees and the cost of acquisition of land).

(d) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(20 U.S.C. 351a, 351c(d)(2), 362)

Subpart C—How Does One Apply for a Grant?

§ 771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

To be considered for a basic grant under this program, an Indian tribe or an organization primarily serving and representing Hawaiian natives must submit to the Secretary an application containing the following:

(a) Information showing that the applicant is—

(1) An Indian tribe, as defined in § 771.4(b); or

(2) An organization primarily serving and representing Hawaiian natives and recognized by the Governor of the State of Hawaii.

(b) A description of the project or projects—from among those listed in § 771.10 (a) or (b), as appropriate—the applicant proposes to conduct under its grant.

(c) A description of how the proposed project is likely to establish or improve public library services for—

(1) Indians living on or near a reservation; or

(2) Hawaiian natives.

(d) In the case of an Indian tribe that supports a public library system, an assurance that the tribe will expend from Federal, State, and local sources an amount sufficient to meet the maintenance-of-effort requirement in § 771.40.

(20 U.S.C. 351c (d)(1), (d)(2); 361, 362, 363)

(Approved by the Office of Management and Budget under control number 1850–0568.)

Subpart D—How Does the Secretary Make an Award?

§ 771.30 What factors does the Secretary consider in making an award?

The Secretary awards a basic grant to an applicant if—

(a) The applicant meets the requirements of eligibility in § 771.2; and

(b) The Secretary determines that the application meets the requirements at § 771.20.

(20 U.S.C. 351c (c)(1), (d)(1), (d)(2); 351d(g)(1), 361(c), 363)

(Approved by the Office of Management and Budget under control number 1850–0568.)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 771.40 What are the financial obligations of a tribe that supports a public library system?

If an Indian tribe that receives a grant under this program supports a public library system, the tribe shall expend from Federal, State, and local sources for public library services an amount not less than the amount the tribe expended from those sources for public library services during the second year preceding the year for which the Secretary has approved a grant to the tribe under this program.

(20 U.S.C. 362(b))

5. Part 772 is added to read as follows:

PART 772—THE LIBRARY SERVICES AND CONSTRUCTION ACT SPECIAL PROJECTS GRANTS TO INDIAN TRIBES AND HAWAIIAN NATIVES PROGRAM

Subpart A—General

Sec.

772.1 The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.
772.2 Who is eligible to apply for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?
772.3 What regulations apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?
772.4 What definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

772.10 What types of projects may be funded under this program?

Subpart C—How Does One Apply for a Grant?

772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

Subpart D—How Does the Secretary Make an Award?

772.30 How does the Secretary evaluate an application?
772.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Grantee?

772.40 What are the financial obligations of a grantee?
772.41 What are the additional financial obligations of a tribe that supports a public library system?

Subpart F—What Are the Administrative Responsibilities of a Grantee?

772.50 Who must administer funds under a special projects grant to an Indian tribe?

Authority: Library Services and Construction Act, Pub. L. 91–600, 84 Stat. 1660, as amended by the Library Services and Construction Act Amendments of 1984, Pub. L. 98–480, 98 Stat. 2236 (20 U.S.C. 351 *et seq.*), unless otherwise noted.

Subpart A—General

§ 772.1 The Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program.

Under the Library Services and Construction Act Special Projects Grants to Indian Tribes and Hawaiian Natives Program—referred to in this part as the Special Projects Grants to Indian Tribes and Hawaiian Natives Program—the Secretary provides Federal financial assistance to establish or improve public library services for Indians residing on or near reservations and for Hawaiian natives.

(20 U.S.C. 351, 351c (c)(2), (d)(1), (d)(2); 361(d))

§ 772.2 Who is eligible to apply for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

The following are eligible to apply for grants under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(a) Indian tribes, as defined in 34 CFR 771.4(b), that have received grants under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 771).

(b) Organizations that—

(1) Primarily serve and represent Hawaiian natives;

(2) Are recognized by the Governor of the State of Hawaii; and

(3) Have received grants under the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program (34 CFR Part 771).

(20 U.S.C. 351, 351a, 351c (c)(2), (d)(1), (d)(2); 361(d))

§ 772.3 What regulations apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

(a) The following regulations apply to an Indian tribe or an organization primarily serving and representing Hawaiian natives that applies for a grant under the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department

Regulations), and Part 78 (Education Appeal Board).

(2) The regulations in 34 CFR Part 771, as appropriate.

(3) The regulations in this Part 772.

(b) An organization primarily serving and representing Hawaiian natives that applies for a grant under this part is also subject to 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 351 *et seq.*)

§ 772.4 What definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program?

The following definitions apply to the Special Projects Grants to Indian Tribes and Hawaiian Natives Program:

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Budget
Contract
Department
EDGAR
Equipment
Facilities
Grant
Grantee
Project
Public
Secretary
Supplies

(b) *Definitions in 34 CFR Part 771.* The following terms used in this part are defined in 34 CFR 771.4(b) (the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program):

Act
Hawaiian native
Indian tribe
Library materials, including restricted collections of cultural materials
Library service
Public library
Public library services

(c) *Definition that applies to this part.* The following definition also applies to this part:

"Librarian" means an individual with training or experience in providing or managing library services.

(20 U.S.C. 351, 351a, 362c)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 772.10 What types of projects may be funded under this program?

(a) The Secretary provides Federal financial assistance under this program to an Indian tribe to conduct one or more of the following projects:

(1) Assessment of tribal library needs.

(2) In-service or preservice training of Indians as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Indians to have access to library services.

(7) Conduct of special library programs for Indians.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(9) Contracts to—

(i) Provide public library services to Indians living on or near reservations; or

(ii) Carry out any of the projects listed in paragraphs (a)(1) through (a)(8) of this section.

(b) The Secretary provides Federal financial assistance under this program to an organization primarily serving and representing Hawaiian natives to conduct one or more of the following projects:

(1) Assessment of library needs of Hawaiian natives.

(2) In-service or preservice training of Hawaiian natives as library personnel.

(3) Salaries of library personnel.

(4) Purchase of library materials.

(5) Dissemination of information about library services.

(6) Transportation to enable Hawaiian natives to have access to library services.

(7) Conduct of special library programs for Hawaiian natives.

(8) Construction, purchase, renovation, or remodeling of library buildings, as described in paragraphs (c) and (d) of this section.

(c) As used in paragraphs (a)(8) and (b)(8) of this section, "construction" includes the following:

(1) Construction of new buildings.

(2) Acquisition, expansion, remodeling, or alteration of existing buildings.

(3)(i) Initial equipment for any building referred to in paragraphs (c)(1) and (c)(2) of this section.

(ii) As used in paragraph (c)(3)(i) of this section, "equipment" includes the following:

(A) Machinery.

(B) Utilities.

(C) Built-in equipment.

(D) Enclosures or structures necessary to house the types of items listed in paragraphs (c)(3)(ii) (A) through (C) of this section.

(E) All other items necessary for the functioning of a particular facility as a facility for the provision of library services.

(4) Within public libraries, construction of spaces that—

(i) Provide shelter from nuclear fallout; and

(ii) Are constructed at a nominal cost as part of a larger project.

(5) Any combination of activities referred to in paragraphs (c)(1) through (c)(4) of this section (including architect's fees and the cost of acquisition of land).

(d) As used in this part, "remodeling" includes the following:

(1) Remodeling to meet the standards of the Architectural Barriers Act of 1968.

(2) Remodeling designed to conserve energy.

(3) Renovation or remodeling to accommodate new technologies.

(4) Purchase of existing historic buildings for conversion to public libraries.

(20 U.S.C. 351a, 251c (c)(2), (d)(2); 361(d), 362; EO 11490, as amended)

Subpart C—How Does One Apply for a Grant?

§ 772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

(a) To be considered for a special projects grant under this program, an Indian tribe or an organization primarily serving and representing Hawaiian natives must submit to the Secretary—

(1) A plan for the year for which the applicant is seeking Federal financial assistance; and

(2)(i) A long-range program; or

(ii) If the tribe or organization has a long-range program on file with the Secretary in conjunction with a grant under this program, an update, if necessary, of that long-range program.

(b)(1) The Secretary regards the plan as an application for Federal financial assistance under Subpart D of this part.

(2) The project or projects the applicant proposes to carry out in its plan must be from among those listed in § 772.10 (a) or (b), as appropriate.

(c) The long-range program must be a comprehensive program that—

(1) Covers a period of not fewer than three years and not more than five years;

(2) Contains a clear and concise description of objectives; and

(3) Includes the following:

(i) Identification of the need for public library services by—

(A) Indians living on or near a reservation; or

(B) Hawaiian natives.

(ii) Identification of the specific service or services needed.

(iii)(A) A description of the project or projects to be undertaken toward meeting those specifically identified needs with assistance under this program.

(B) The project or projects must be from among those listed in § 772.10 (a) or (b), as appropriate.

(20 U.S.C. 351c (c)(2), (d)(2); 351d(g)(2), 361, 362, 364)

(Approved by the Office of Management and Budget under control number 1850-0565.)

Subpart D—How Does the Secretary Make an Award?

§ 772.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 772.31.

(b) The Secretary awards up to 100 possible points for these criteria.

(c) The maximum possible score for each complete criterion is indicated in parentheses.

(20 U.S.C. 351c (c)(2), (d)(2); 351d(g)(2), 361(d), 364)

§ 772.31 What selection criteria does the Secretary use?

(a) *Plan of operation.* (15 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other evidence that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan. (5 points)*

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project. (See 34 CFR 75.590—Evaluation by the grantee.)

(2) The Secretary considers the extent to which the methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine if the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(f) *Need.* (20 points)

(1) The Secretary reviews each application to determine the need for applicant to carry out the proposed public library services from among the projects listed in § 772.10 (a) or (b), as appropriate.

(2) In making this determination the Secretary considers—

(i) The needs to be addressed by the project, including the extent and severity of these needs as indicated by the number or percentage of individuals in the area to be served by the project who require the proposed library services;

(ii) A description of other library services in the area—including any offered by the applicant—that are designed to meet the same needs as those to be addressed by the project;

(iii) Evidence that these other library services are insufficient in quantity or quality or both, or an explanation of why they are not used by individuals who require the proposed public library services; and

(iv) A description of how the project is likely to meet these needs by establishing or improving public library services for—

(A) Indians living on or near a reservation; or

(B) Hawaiian natives.

(g) *Consistency with long-range program.* (20 points)

(1) The Secretary reviews each application to determine the consistency of the project with the applicant's long-range program submitted under § 772.20.

(2) The Secretary considers—

(i) How the project is designed to help meet one or more of the specific needs identified in the long-range program; and

(ii) The extent to which the project is likely to meet one or more of the long-range objectives described in the program.

(h) *Community involvement.* (10 points)

(1) The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the community are involved in the project.

(2) The Secretary considers the extent to which individuals to be served and other members of the community—

(i) Were involved in planning and developing the project; and

(ii) Will be involved in operating and evaluating the project.

(20 U.S.C. 351c (c)(2), (d)(2); 535d(g)(2), 361(d), 364)

(Approved by the Office of Management and Budget under control number 1850-0565.)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 772.40 What are the financial obligations of a grantee?

A tribe that receives a grant under this program shall provide the difference between—

(a) The costs of carrying out the plan approved by the Secretary for that year; and

(b) The Federal allocation, which, in no case, exceeds 80 percent of the costs.

(20 U.S.C. 351e(c))

§ 772.41 What are the additional financial obligations of a tribe that supports a public library system?

If an Indian tribe that receives a grant under this program supports a public library system, the tribe shall expend from Federal, State, and local sources for public library services an amount not less than the amount the tribe expended from those sources for public library services during the second year preceding the year for which the Secretary has approved a grant to the tribe under this program.

(20 U.S.C. 362(b))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 772.50 Who must administer funds under a special projects grant to an Indian tribe?

Funds granted to an Indian tribe under this program must be administered by a librarian.

(20 U.S.C. 351c(c)(2))

PART 76—STATE-ADMINISTERED PROGRAMS

6. Paragraph (v) of § 76.102 is amended by removing the words "and the annual programs" and inserting instead the words "a long-range program, and an annual program".

Appendix A—Summary of Comments and Responses

[Editorial Note.—The following Appendix will not appear in the Code of Federal Regulations.]

The following is a summary of the public comments received on the proposed regulations published in the FEDERAL REGISTER on May 16, 1985 (50 FR 20522), and the Secretary's responses to those comments including any changes. The comments and responses are organized in the same order as the referenced sections are organized in these final regulations.

Parts 768 and 769—The Library Services and Construction Act Foreign Language Materials Acquisition Program and Library Literacy Program

Comment. One commenter felt that applications for funds under the Foreign Language Materials Acquisitions Program and the Library Literacy Program being forwarded directly to the Secretary for review would prevent statewide coordination, particularly in the case of the Library Literacy Program.

Response. No change has been made. Title V (Foreign Language Materials Acquisition) provides that the Secretary will carry out a discretionary program for making grants available directly to State and local public libraries for the acquisition of foreign language materials. Title VI (Library Literacy Program) provides that the Secretary will carry out a discretionary program for making grants available directly to State and local public libraries for the purpose of supporting literacy programs. However, the House Conferees recommended that applicants for funding under the Library Literacy Program show that the proposed projects are not in conflict with the State plan required under the Act, and demonstrate evidence of cooperation and coordination with other service providers as appropriate, including State adult education officials or their local representatives (See H.R. Rep. No. 1075 98th Cong., 2d Sess 21 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984). Section 769.31(f) contains a selection criterion on cooperation and coordination with other service providers. In addition, local public libraries are encouraged to indicate in their application to the Secretary that their applications are not in conflict with the State plan. This should result in the coordination of projects funded under Titles V and VI with those of other service providers.

Sections 768.1 and 769.1 How does the Secretary evaluate an application?

Comment. One commenter observed that "Both 34 CFR 768.31 and 769.31 provide detailed scoring information used by the Secretary to evaluate applications for grants under Titles V and VI of the Act". The commenter asked what approach, beyond this scoring method, would be used to award grants when all applications cannot be funded?

Response. No change has been made. All applications are evaluated and scored by a review panel. If the successful applications request funds greater than the amount of grant funds available, the Department negotiates with the successful applicants.

Sections 768.4, 769.4, 770.4, 771.4, and 772.4 What definitions apply to the five parts of the Library Services and Construction Act?

Comment. One commenter suggested that the definition of "library materials" in all five parts of the regulations be expanded to include "computer software" as so many libraries are now purchasing and circulating computer software to users.

Response. A change has been made. Sections 768.4(c), 769.4(c), 770.4(c), and 771.4(b), now read: "Library materials" means "books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial works, graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, processed video and magnetic tapes, computer software, and materials designed specifically for the handicapped." This revised definition is referenced in § 772.4(b).

Section 768.4 What definitions apply to the Foreign Language Materials Program?

Comment. One commenter requested that a definition for "State public library" be included in the definitions.

Response. A change has been made. Section 768.4(a) now references "State library administrative agency" which is defined in section 3 of the Act. Section 768.4(c) now includes the following: "State public library" means, "for this program, the State library administrative agency" as defined in section 3(10) of the Act. However, since some State library administrative agencies are responsible only for the extension and development of public libraries within their respective States and have no responsibility for a circulating collection of books and other library materials, the State library administrative agency in those States should request that the library at the State level responsible for circulating library materials statewide, submit the application for funds under the LSCA Foreign Language Materials Program. In determining what was meant by the term "State public library", as used in Title V of the Act, consideration was given to Congressman Simon's statement in the House hearings on H.R. 2878, (130 Cong. Rec. H258 (daily ed. January 31, 1984)) to the effect that Title V would ". . . not only benefit library users who speak English as a second language," (limited English-speaking proficiency under the LSCA State-Administered Program), "but it will also provide an incalculable resource to English-speakers who are learning a second language". (LSCA Foreign Language Materials Program)

Section 769.4 What definitions apply to the Library Literacy Program?

Comment. One commenter asked why the term "State public libraries" was not defined in the Library Literacy Program Part of the NPRM.

Response. No change has been made. Section 769.4(a) references the "State library administrative agency" and § 769.4(c) provides that for the Library Literacy Program "State public library" means the "State library administrative agency".

Comment. One commenter suggested that the definition of "functionally illiterate adult" as defined in § 769.4(c) could apply to the "developmentally disabled" and notes that a distinction is not made between these two groups in reference to "illiteracy" under Title I of the LSCA State-Administered Program.

Response. No change has been made. Section 601(a) of the Act provides that the Secretary shall carry out a program of making grants from sums appropriated pursuant to section 4(a)(5) of the Act to State and local public libraries for the purposes of supporting literacy programs. Section 601(a) provides for grants to State public libraries for the purposes of coordinating and planning library literacy programs and making arrangements for training librarians and volunteers to carry out such programs. Grants to local public libraries are for coordinating and planning library literacy programs, the acquisition of materials for literacy programs, and using library facilities for such programs. Neither the Act nor Parts 769

and 770 of these final regulations preclude the inclusion of the developmentally disabled in the definition of "functionally illiterate adult".

Comment. One commenter suggested that the definition of "library materials" include materials designed to assist in the training of literacy tutors.

Response. No change has been made. The definition does not address the uses of materials. It merely lists the kinds of materials that are considered to be library materials for the purposes of this program.

Section 769.31 What selection criteria does the Secretary use?

Comment. One commenter suggested, in order to assure coordination with other Statewide literacy projects, § 769.31 should include a provision requiring the submission of a copy of the grant application to the State library administrative agency for review and comment. The commenter also suggested that the grant application specify how the project may relate to a Statewide plan for literacy.

Response. No change has been made. However, instructions in the direct grant application package for local public libraries state that the Secretary encourages applicants to indicate in the narrative that they have contacted the State library administrative agency to determine the proposed project is not in conflict with the Library Services and Construction Act State-Administered Program literacy provisions. (34 CFR Part 770). (See H.R. Rep. No. 1075, 98th 2d Sess. 21 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)

Part 770—The Library Services and Construction Act State-Administered Program

Comment. In reference to the Preamble to the NPRM, several commenters questioned how State library administrative agencies "should assist Indian tribes and eligible Hawaiian organizations with Title I funds in planning and developing library services to meet their needs," and "assist Indian tribes and Hawaiian natives to participate in resource sharing to the extent possible" under Title III.

Response. No change has been made. Many of the States where there are Indian tribes, have been and will continue assisting these tribes under the provisions of Titles I and III of the LSCA State-Administered Program. For example, in the past under the provisions of Title I (Library Services), Indian tribes and Hawaiian Natives have received assistance through projects targeting areas without services, areas with inadequate services, the disadvantaged, and the physically handicapped, institutionalized individuals, individuals with limited English-speaking proficiency, and the elderly. Indian tribes and Hawaiian natives have also received Title I assistance through projects intended to strengthen State library administrative agencies and through literacy projects. Under the provisions of Title III (Interlibrary Cooperation and Resource Sharing), States have included Indian tribes' and Hawaiian natives' school libraries, public libraries, and college libraries in interlibrary cooperation and resource sharing projects. Therefore, although Pub. L. 98–480 authorizes Title IV (Library Services for Indians), with provisions for Indian tribes and organizations primarily serving and representing Hawaiian natives exclusively, Indian tribes and Hawaiian natives need not be restricted to the provisions of Title IV and should continue to be assisted under the LSCA State-Administered Program. Also, Indian tribes having "public libraries" as defined under section 3(4) of the Act may submit applications to the Secretary for direct grants under the provisions of the LSCA Foreign Language Materials Acquisition or Library Literacy Programs. Finally, it should be noted that although Title IV funding goes directly to Indian tribes it was the stated intention of the House Committee on Education and Labor that the tribes themselves coordinate library service programs with State libraries in order to insure maximum benefit from Federal library funds. (See H.R. Rep. No. 98–165, 98th Cong., 1st Sess. 7 (May 16, 1983)).

Comment. Several commenters believed the interpretation in the Preamble to the NPRM, that administrative costs may not exceed the greater of six percent of the sum of the amounts allotted to each State under Titles I and II for any fiscal year, or sixty thousand dollars, was incorrect because section 8 of the Act indicated six percent of the State's title III allotment was also to be included but deducted from either the Title I or Title II allotments.

Response. No change has been made. Section 8 (Administrative Costs) of the Act states: "A State may expend funds received under titles I and II for administrative costs in connection with programs and activities carried out under titles I, II, and III, but such administrative expenditures under such titles for any fiscal year may not exceed the greater of (1) 6 per centum of the sum of the amounts allotted to such State under such titles for such fiscal year or (2) $60,000". The House Conference Report states: "Section 8 of the House bill requires that a State may expend funds received under Titles I and II of the Act for administrative costs, but those expenditures may not exceed 5 percent of the amount appropriated under those titles or $50,000, whichever is greater. The Senate amendment has no comparable provision. The Senate recedes with an amendment that raises the percentage of *Title I or II funds that can be expended for State administrative costs* to 6 percent and the amount to $60,000, whichever is greater". (See H.R. Rep. No. 1075, 98th Cong., 2d Sess. 19 (1984), also printed at 130 Cong. Rec. H 10137, daily ed. September 25, 1984) (emphasis added.)

Comment. Several commenters suggested that the technical amendments to the Library Services and Construction Act (H.R. 1997) passed by the House of Representatives on May 21, 1985, should be incorporated into the final regulations.

Response. No changes can be made in the regulations until both Houses of the Congress have resolved differences in the proposed technical amendments to the LSCA, and the President has signed the resulting bill into law. Until such time as such technical amendments become law, these regulations can only reflect the amended LSCA statute currently in effect.

Comment. A commenter asked if it were possible for the regulations to include a provision which allows for carryover of allotments.

Response. No change has been made. The issue of carrying over appropriations to the next fiscal year is addressed in section 412(b) of the General Education Provisions Act (Pub. L. 90–247), and at 34 CFR 76.705(a). Section 4(b) of the LSCA also makes provision for sums appropriated to "be available for obligation and expenditure for the year specified in the Appropriation Act and for the next succeeding year".

Section 770.2 Who is eligible to apply for a grant under the State-Administered Program?

Comment. Several commenters felt that under § 770.2(b)(1) "State-supported institutions", "public library systems", "other eligible recipients as defined in the State plan", "library networks," and "other appropriate providers of library services" would not be eligible to apply to respective States for subgrants as

these entities are not included in the Act's definition of "public library".

Response. No change has been made. In pertinent part, section 3(5) of the Act defines the term "public library" as a library which provides services to residents of a community, district, or region and receives its financial support in whole or part from public funds. Moreover, the "State library administrative agency", as defined in section 3(10) of the Act, is the agency "charged by law of that State with the extension and development of public library services throughout the State. . .". The means by which a State library administrative agency does so is left to the discretion of each State library administrative agency so long as it remains in compliance with the State plan and the terms and requirements of the Act. Thus, although the entities listed by the commenters are not specifically included in the statutory definition of "public library" they are not thereby necessarily precluded from applying to their respective States for subgrants under the State-Administered Program.

Comment. One commenter requested that "information centers" be included under § 770.2(b)(2) as being eligible to apply for subgrants under the Interlibrary Cooperation and Resource Sharing Program.

Response. No change has been made. Section 302(a) (Uses of Federal Funds) of the Act provides that Title III funds shall be used for "establishing, expanding, and operating local, regional, and interstate cooperative networks of libraries, which provide for the systematic and effective coordination of the resources of school, public, academic, *and special libraries and information centers* for improved supplementary services for the special clientele served by each type of library or center" (emphasis added). Thus, subgrants of Title III funds may be awarded for projects which provide for the coordination of the resources of special libraries and information centers with those of school, public and academic libraries. Although the Act does not prohibit the issuance of a subgrant for such a project to an "information center" the Secretary does not consider it necessary to specifically include "information centers" in § 770.2(b)(2).

Section 770.4 What definitions apply to the State-Administered Program?

Comment. Several commenters asked why the term "handicapped" is defined at § 770.4(c) when it is defined at sections 3(4) and 3(9)(B) of the Act. The Act uses the terms "handicapped" at section 2(a)(2), "handicapping conditions" at section 6(b)(4)(A), "handicap" at section 101(1), "library services to the physically handicapped" at section 102(a)(2)(B)(ii), and "handicapped individuals" at section 103(5).

Response. No change has been made. The definition of "handicapped" in § 770.4(c), is retained in these final regulations. Although the legislative history indicates a clear Congressional concern for the "handicapped" (See for example H.R. Rep. No. 1075, 98th Congress, 2d Sess. 19 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)) and, as noted by the commenter, numerous references to the handicapped appear throughout the Act, the Act does not define this term except in the course of defining terms such as "State institutional library services" and "library services for the physically handicapped". A uniform definition applicable to all States is necessary for the administration of the program, and thus one is included in these regulations.

Comment. One commenter asked why the definitions for "illiteracy" and "literacy" at § 770.4(c) do not contain grade level correlations.

Response. No change has been made. Uniform definitions of the statutory terms "literacy" and "illiteracy" are necessary to the administration of the State-Administered Program. However, it is felt that grade level correlations would be rather meaningless in the context of public library literacy programs.

Comment. One commenter suggested adding a definition for "information centers" or at least clarifying whether "information centers" as used in Title III (Interlibrary Cooperation and Resource Sharing) of the Act are included in the definition of "community information referral centers", as used in Title I (Library Services) of the Act and defined at § 770.4(c) of these regulations.

Response. No change has been made. The definition for "community information referral centers" in § 770.4 is the same as the one used by the Interdepartmental Task Force on Information and Referral, an organization of 12 Federal agencies which determined that a uniform definition was necessary to promote a clearer understanding of, and facilitate a more consistent approach in the provision of information and referral services. The term "community information referral centers" addresses public libraries only under the provisions of Title I (Library Services) of the Act and should not be confused with "special libraries and information centers" as used under section 302(a)(2) of the Act for Title III purposes.

Comment. Several commenters requested that the definition for "interlibrary cooperation" in § 770.4(c) be consistent with the language in § 770.12(b)(2)(ii) and suggested that it would be consistent if the definition for "interlibrary cooperation" were made to read: "interlibrary cooperation means activities which are intended to provide for effective coordination of the resources of school, public, academic and special libraries and information centers".

Response. No change has been made. As defined in § 770.4(c) "interlibrary cooperation" means: "the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers". This definition is already consistent with the language in § 770.12(b)(2)(ii) which provides that as used in § 770.12(b)(2)(i) "cooperative library networks" are those networks designed to "provide for the systematic and effective coordination of the resources of various types of libraries . . .".

Comment. One commenter noted that "Under the definition of the term *Public library* it is referred to as a 'library that serves free of charge all residents of a community, district, or region and receives its financial support in whole or in part from public funds . . .'. Under the new definitions the term public funds is no longer defined. This would allow for inclusion of funds raised, for example locally in a financial support drive and remove the necessity for governmental funds. Is this your intention"?

Response. No change has been made. Section 770.4(b) of these regulations references "public" as defined in EDGAR which reads: "as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government". Therefore, public funds as applied to Title I (Library Services) and used in the definition of "public library" are funds deposited in accordance with State and local laws and regulations, to the account of the State or political subdivision or agency, organization, or institution without conditions or restrictions that would negate their character as public funds.

As applied to Title II (Public Library Construction), the expenditures that the State shall consider in computing its share for construction under Title II (Public Library Construction) of the Act are those made by the applicant for that

purpose, regardless of the source of funds. Section 202(b) of the Act provides "For the purposes of subsection (a), the Federal share of the cost of construction of any project assisted under this title shall not exceed one-half of the total cost of such project". The recommendation was made in the Conference Committee (H.R. Rep. No. 1075, 98th Cong., 2d Sess. 20 (1984), also printed at 130 Cong. Rec. H10137 (daily ed., September 25, 1984) that the inclusion of section 202(b) of the Act "will allow Federal funding to go further in financing construction projects and will hopefully encourage private sector involvement in raising construction funds for libraries".

Comment. One commenter noted that the term "reading" had been omitted under § 770.4(c) from the definition for "limited English-speaking proficiency" and asked why this activity was omitted.

Response. A change has been made. The term "reading" was unintentionally omitted from this section of the NPRM and has been inserted in the last paragraph of the definition for "limited English-speaking proficiency".

Section 770.10 What types of projects may be funded under Library Services grants?

Comment. Several commenters asked if the term "handicapped" in § 770.10(b)(4)(i)(B) meant the same as "library services to the handicapped" at § 770.10(b)(ii) and if the term "institutionalized" in § 770.10(b)(4)(i)(B) meant the same as "State institutional library services" in § 770.10(b)(10)(i). Commenters felt that if these terms are synonymous there is no need to repeat them. However, several commenters believed that "library services to the physically handicapped" was not listed as a type of project which may be funded under Library Services grants.

Response. A change has been made. Section 770.10(b)(10)(ii) now reads: "Library services to the physically handicapped; . . ." and relates to the provisions of section 102(a)(2)(B)(ii) of the Act. The term "handicapped" in § 770.10(b)(4)(i)(B) relates to section 103(5) of the Act which requires States to describe in their annual programs, "the manner in which funds for programs for handicapped individuals will be used to make library services more accessible to such individuals". The term "institutionalized" in § 770.10(b)(4)(i)(B) relates to "institutionalized individuals" as provided for in section 2(a)(2) and section 103(3) of the Act. Section 2(a)(2) relates to "improving State and local public library services for older Americans, and for handicapped, insitutionalized and other disadvantaged individuals;". The term "State insitutional library services" in § 770.10(b)(10)(i) relates to the provisions of section 102(a)(2)(B)(i) of the Act which contemplates the use of Federal LSCA funds for "State institutional library services".

Comment. One commenter noted that the regulations for implementation of Title VI (LSCA Library Literacy Programs) make repeated reference to *volunteer* service and asked if this would impose a limitation on the LSCA State-Administered Program, Title I—Library Services, to the effect that Title I funds could not be used to pay literacy tutors or adult basic education tutors for their services.

Response. No change has been made. Section 101 of Title I of the statute provides: "The Secretary shall carry out a program of making [Title I] grants to States which have approved basic State plans under section 6 and have submitted annual programs under section 103(4) *for assisting libraries in providing literacy programs* for adults and school dropouts in cooperation with other agencies and organizations, if appropriate". (emphasis added). Thus, States may expend Title I funds for the salaries of literacy program tutors.

Section 770.11 What types of projects may be funded under Public Library Construction Grants?

Comment. Two commenters requested that the regulations provide for insuring that construction projects assisted under Public Library Construction grants are carried out in compliance with section 106 of the National Historic Preservation Act.

Response. No change has been made. Although section 3(2) of the Act allows for the purchase of existing historic buildings for conversion to public libraries, there are no provisions in the Act requiring compliance with section 106 of the National Historic Preservation Act. Therefore, these regulations do not contain such a requirement. It should be noted, however, that EDGAR does contain requirements which apply to historic buildings purchased with Federal Public Library Construction Grant funds. Specifically, 34 CFR Part 76 (State-Administered Programs) states at § 76.600 (Construction) that "(a) A State or a subgrantee that requests program funds for construction, shall comply with the rules on construction that apply to applicants and grantees under 34 CFR §§ 75.600–75.615. (b) The State shall perform the functions that the Secretary performs under §§ 75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications) of this title. (c) The State shall provide to the Secretary the information required under 34 CFR 75.602(a) (Preservation of historic sites)". 34 CFR 75.602(a) states "an applicant shall describe in its application the relationship of the proposed construction to and probable effect on any district, site, building, structure, or object that is—(1) Included in the National Register of Historic Places; or (2) Eligible under criteria established by the Secretary of Interior for inclusion in the National Register of Historic Places".

In addition, Part V, of the application for Federal assistance for construction programs (OMB Circular A–102 (Revised)), page 36, Assurance 15, requires the applicant to assure that it "will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a–1 *et seq.*) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirments established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties."

Comment. Several commenters requested clarification as to whether under § 770.11 unused public school buildings may be converted into public libraries with LSCA Title II funds.

Response. No change has been made. The Act does not address unused public school buildings and therefore they are not specifically addressed in the regulations. However, the conversion of public school buildings into public libraries is permissible under § 770.11. Indeed, it was the recommendation of the Conference Committee (H.R. Rep. No. 1075, 98th Cong., 2d Sess. 18 (1984), also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)) that *priority* be given, when economically feasible, to the acquisition and conversion of historic buildings and unused public school buildings for use as libraries.

Comment. Several commenters wanted a justification as to why "nuclear fallout shelter spaces" were included in § 770.11(b)(6)(i) as there are

no references in the Act or EDGAR to nuclear fallout shelter spaces.

Response. No change has been made. Nuclear fallout shelter spaces were included among public library spaces for which Title II funds may be used, because Executive Order 11490, "Assigning Emergency Preparedness Functions to Federal Departments and Agencies", provides that "all construction projects using Federal funds may use construction funds for nuclear fallout shelters".

Comment. Several commenters felt that § 770.11(b)(7) should be clarified because the proposed section indicates "any combination of two or more of the activities referred to in paragraphs (b)(1) through (b)(6) of this section" would not constitute construction. Section 770.11 (b)(4) and (b)(5) refer to architectural services and acquisition of land respectively, and commenters felt these two combined do not constitute construction.

Response. A change has been made. Section 770.11 (b)(4) (Architectural service) and § 770.11(b)(5) (Acquisition of land) have been deleted. Sections 770.11(b)(6) and 770.11(b)(7) have been renumbered as §§ 770.11(b)(4) and 770.11(b)(5), respectively, and § 770.11(b)(5) has been changed so that it now reads: "Any combination of activities referred to in paragraphs (b)(1) through (b)(4) of this section (including architect's fees and the cost of acquisition of land)". (Sections 771.10(c) and 772.10(c) have been changed in a manner consistent with the changes made to § 770.11(b).)

Comment. One commenter suggested the States need further clarification, guidance and interpretations of the term "alterations" although the term "remodeling" has been adequately defined in § 770.11(c).

Response. No change has been made. Neither the Act nor EDGAR draw a distinction between "remodeling" and "alteration", which are *both* included in the Act's definition of "construction". However, both Webster's Third New International Dictionary (1971) and Roget's International Thesaurus (Third Edition) use these terms interchangeably, and the Secretary does not consider it necessary to provide any further clarification. In cases where States have questions involving specific situations and circumstances, the Department may be contacted for technical assistance.

Comment. One commenter asked if the phrase "all other items necessary for the functioning of a particular facility" in § 770.11(b)(3)(E) meant that "library materials" could be included under "all other items", and if so, whether the "library materials" purchased for collection purposes during a construction contract period, could be applied for matching purposes.

Response. No change has been made. The phrase "all other items necessary for the functioning of a particular facility" refers to items of equipment and not to "library materials". (See section 3(2) of the Act.) "Library materials", as defined in § 770.4(c) of these regulations, may not be purchased with funds awarded under Title II (Public Library Construction), nor may the cost of such library materials be applied toward satisfying the Title II matching requirement. Section 202(a) (Uses of Federal Funds) under Title II of the LSCA State-Administered Program requires that Title II funds be used for the *construction* (as defined in section 3(2)) of public libraries.

Comment. Several commenters asked if these regulations apply to public libraries constructed with funds granted under Pub. L. 98-8, the Emergency Jobs Act.

Response. No change has been made. These regulations will apply only to construction carried out under grants made after the effective date of the regulations. However, to the extent the regulations incorporate the statutory amendments enacted in 1984. Grants made prior to October 17, 1984, are subject to the regulations in effect at that time.

Comment. One commenter asked what is meant by "nominal cost" in § 770.11(b)(6)(ii).

Response. No change has been made. Pursuant to Executive Order 11490, nuclear fallout shelters may be constructed with Title II funds as part of a larger project within a public library, and at a nominal cost. Generally, in pertinent part, 34 CFR 75.607 requires a grantee to insure that a construction project is "(1) Functional; (2) Economical; and (3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area . . . ". In the case of the use of Title II funds for nuclear fallout shelters within public libraries, not only must the project meet the requirements of 34 CFR 75.607, but the expense incurred must be reasonable and necessary in light of the size of the shelter as compared with the size of the overall project.

Section 770.12 What types of projects may be funded under Interlibrary Cooperation and Resource Sharing grants?

Comment. One commenter noted that "interlibrary cooperation" is defined in § 770.4(c) and asked why "resource sharing" is not defined.

Response. No change has been made. The LSCA Amendments of 1984 contain, among other findings, the Congressional finding that the role of libraries has expanded to include the sharing of resources and materials among a variety of libraries. (Section 101.) The definition in § 770.4(c) provides that "Interlibrary cooperation means the systematic and effective coordination of the resources of school, public, academic, and special libraries and information centers". Section 304 (Resource Sharing) of the Act, describes the kinds of activities a State may engage in to systematically and effectively coordinate library resources and materials. Consequently, it is not felt that a definition of "resource sharing" is necessary.

Comment. Several commenters suggested listing in § 770.12(b)(1)(ii)(B) the items specified in Section 304(c) of the Act.

Response. No change has been made. It is believed that repeating the objectives listed in the statute at section 304 serves no useful purpose in these regulations since State library administrative agencies must use both the statute and these regulations in developing their programs.

Comment. Several commenters requested a definition of the term "eventual compliance", as used in § 770.12(b)(1)(i)(A).

Response. No change has been made. The Conferees did not provide a definition or clarification for the term "eventual compliance". (See H.R. Rep. No. 1075 98th Cong. 2d Sess. 20 1984, also printed at 130 Cong. Rec. H10137 (daily ed. September 25, 1984)) The Joint Explanatory Statement of the Committee of Conference, states: "(19) The House bill specifies that the State plan be directed toward eventual compliance with the provisions of this section. The Senate amendment does not specify 'eventual compliance'. The Senate recedes".

Comment. One commenter recommended deleting the words "may include but are not restricted to" under § 770.12(b), of the types of projects permissible under Interlibrary Cooperation and Resource Sharing grants because section 302(a) of the Act limits the grants to two activities: "(1) for planning for, and taking other steps leading to the development of cooperative library networks, and (2) establishing, expanding, and operating local, regional and interstate cooperative networks of libraries . . . ".

Response. A change has been made. The words "but are not restricted to,"

have been removed from § 770.12(b), which now reads: "These types of projects include only the following:".

Section 770.20 What Must a State Do To receive a Grant Under the State-Administered Program?

Comment. Several commenters asked if the State must submit to the Department a list of members of the State Advisory Council on Libraries established pursuant to § 770.20(a)(1) and section 3(8) of the Act.

Response. No change has been made. It is not required that a State submit a list of members of the State Advisory Council on Libraries. The State must, however, assure the Secretary in its Basic State Plan that "it has established a State Advisory Council on Libraries pursuant to the requirements of section 3(8) of the Act". (See Section 6(a)(3)).

Section 770.21 What Must a Stdte Plan Include?

Comment. Several commenters asked why the regulations state at § 770.21(a)(1) that the basic State plan covers five years when the State library administrative agencies were instructed and required to submit a basic State plan covering three years in order to acquire their FY 85 allotments under Titles I through III of the Act.

Response. No change has been made. Section 76.103, "Three-Year State Plans", of EDGAR provides that: "(a) Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period". On October 17, 1984, the President signed legislation reauthorizing the LSCA and pursuant to 34 CFR 76.103(a), a basic State plan covering a three year period was forwarded to every State library administrative agency. In order to reduce paperwork under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and pursuant to the authority provided by 34 CFR 76.103(a), these regulations now provide for basic State plans covering periods of five years.

Comment. One commenter noted that in § 770.21(a)(1), a basic State plan is described as covering a five year period and that this is in conflict with State law in a few States. They have been advised by their Office of Attorney General that they cannot sign assurances and commit State funds that have yet to be appropriated by the State legislature. The commenter suggested that the section be changed to provide that the basic State plan cover a one to five year period. This would allow those States in which a five-year commitment is legal to take advantage of the paperwork reduction offered by the five-year plan, but would allow for the signing of a one-year plan by those States unable to sign a longer one.

Response. No change has been made. Section 76.103(a) of EDGAR states, "Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period." Because the LSCA State-Administered Program is authorized for a period of five years, the regulations provide that the effective period of the basic State plan will be for five years. The Department will work with those States for which this presents a problem on a case by case basis.

Comment. Several commenters asked if the State plan consisted of the basic State plan, a long-range program and an annual program or if it consisted, as 34 CFR 76.102(v) states, of the basic State plan and the annual program.

Response. A change has been made. The State plan consists of (1) the basic State plan, (2) the long-range program, and (3) the annual program described in § 770.21 under the provisions in section 6 of the Act. A conforming change has been made in 34 CFR 76.102(v).

Section 770.22 What Must a State Include in a Basic State Plan?

Comment. One commenter felt that the provision in proposed § 770.22(c), requiring an assurance that "the State will give priority to proposed projects designed to carry out one or more of the following objectives" could be interpreted that a State may give priority to only one of the objectives.

Response. A change has been made. The words "one or more of" are not used in section 6(b)(4) of the Act and have been removed from these final regulations. Section 770.22(c) now reads: "An assurance that the State will give priority to programs and projects designed to carry out the following objectives". However, this should not be construed to mean that priority may be given only to those projects designed to carry out *all* of the listed objectives.

Comment. Several commenters were pleased to note that under § 770.22(a)(4), an assurance was required from State library administrative agencies that reports would be submitted showing, among other things, the extent to which funds awarded under the Act have been effective in carrying out the purposes of the program. The commenter felt it is important for the Department to aggregate, summarize, and disseminate widely these reports because such information helps ensure that "(1) States are able to take advantage of program results in other States and (2) the information is valuable to library users, librarians, and local, State, and Federal policymakers."

Response. No change has been made. Under a State-administered program, the requirement for performance reports appears in 34 CFR 76.720 which references other pertinent sections of EDGAR.

Comment. A number of commenters noted that in this section there is a list of assurances which are to be included in a basic State plan and that currently this plan is an ED preprinted OMB approved form. They asked if this section does not imply the State will develop the plan and submit it to the Department for approval. They asked, further, if ED would accept a basic State plan developed by the State that includes only the items enumerated in § 770.22 rather than the ED preprinted form.

Response. No change has been made. The preprinted basic State plan includes the assurances required in the statute and the pertinent parts of EDGAR listed in § 770.3. It is designed to assist States to ascertain that they are complying with all applicable Federal requirements.

Section 770.23 What Must a State Include in a Long-Range Program?

Comment. Several commenters felt that the long-range program should be a comprehensive plan that identifies each State's library needs. Section 3(12) of the Act defines the "long-range program" as the compehensive five-year program which identifies a State's library needs and sets forth the activities to be engaged in toward meeting the identified needs supported with the assistance of Federal funds made available under the Act. These regulations limit the long-range program to library services, public library construction, and interlibrary cooperation and resource sharing, as appropriate. The commenters felt that this ignores the definition given in the Act which requires a compehensive program which identifies a State's library needs with no limitation on the areas of need to be identified. The commenters proposed that it is when the State "sets forth the activities to meet the needs" that the State may limit the activities to those "supported with the assistance of Federal funds . . .".

Response. A change has been made. Section 770.23(a)(1) of the final regulations now reads: "A compehensive description of the State's identified present and projected library needs".

Section 770.24 What Must a State Include in an Annual Program?

Comment. Several commenters felt that requiring the State to give a description of the projects and activities to be carried out or for which the State plans to award subgrants under library services, public library construction, or interlibrary cooperation and resource sharing, when the annual program is submitted to the Department, would be difficult to accomplish. Several commenters felt that § 770.24(a)(1) should read: "a description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year with regard to library services, public library construction, or interlibrary cooperation and resource sharing, as appropriate". The commenters noted that at the time an annual program is developed, decisions on the approval of specific subgrants have not been made and ongoing programs such as library services for the physically handicapped would be delayed.

Response. A change has been made. In pertinent part, § 770.24(a)(1) now reads: "A description of the projects and activities the State plans to carry out—and the basis upon which the State plans to award subgrants—during the specified year . . .". Section 3(13) of the Act defines the term "annual program" to mean: "the projects which are developed and submitted to describe the specific activities to be carried out annually toward achieving fulfillment of the long-range program". Section 3(13) of the Act also provides that these annual programs are to be submitted "in such detail as required by regulations promulgated by the Secretary." Pursuant to applicable statutory provisions and pursuant to § 770.24(a)(1) of these final regulations, States must convey in their annual programs the manner in which they intend to expend their LSCA allotments, that is, the various permissible program purposes or activities on which they intend to expend their allotments. Moreover, States must provide detailed information regarding specific program activities, that is, information reflecting attention to particular elements within the overall LSCA State-Administered Program. Those States which have subgrant information available to them at the time their annual programs are being compiled and prepared for submission to the Department, are strongly urged to include such subgrant information as well. The majority of the States with library programs involving the issuance of subgrants to local libraries currently submit subgrant information in their annual program. This practice has proven to be advantageous in many respects both for the States and for the Department, and States are encouraged to continue submitting subgrant information whenever possible.

Comment. Several commenters requested that "State institutional library services" and "library services to the physically handicapped" be added for clarity under § 770.24(b)(1) instead of requesting the reader to refer to § 770.40(c).

Response. No change has been made. The financial obligations a State must meet under a Library Services grant, including those regarding State institutional library services and library services to the physically handicapped, are all listed under § 770.40. It would serve no useful purpose to repeat them in § 770.24 which describes what a State must include in its annual program.

Comment. One commenter asked for a clarification as to whether the reference to Library Services in-kind contributions in § 770.24(b)(5)(ii) meant that local libraries should not report in-kind contributions to the State, since the State did not include in-kind contributions to the Federal Government among the amounts the State declares it will have available for expenditure under § 770.24(b)(5)(i).

Response. No change has been made. The State may request that a local applicant requesting Federal Library Services grant funds report in-kind contributions, but such contributions may not be included among the amounts the State declares it will have available for expenditure under § 770.24(b)(5)(i).

Comment. One commenter felt that many of the timelines in the previous Public Library Construction grant regulations were helpful since the regulations do not define what is meant by "completion of construction" and that conceivably construction projects could go on indefinitely.

Response. No change has been made. The applicable EDGAR regulation at 34 CFR 75.605, "Beginning the Construction", states that a grantee must begin work on construction within a reasonable time after the grant for the construction is made. 34 CFR 75.606, "Completing the Construction", states that the grantee must complete its construction within a reasonable time and in accordance with its application and approved drawings and specifications. Thus, the applicable regulations in EDGAR provide sufficient guidance for the timely completion of an approved construction project.

Comment. Several commenters felt that the provisions of § 770.24(b)(2) and section 102(c)(1) of the Act regarding "major urban resource libraries" (MURLs), were unfair because in Fiscal Year 85 the total appropriation for title I was $75 million less $1.5 million for Indian tribes and Hawaiian natives, and yet both the statute and the regulations as written require States with MURLs to reserve the entire excess above $60 million (that is, the full $15 million) in calculating the amount of each State's MURL grant.

Response. No change has been made. Section 102(c)(1) of the Act provides that when the appropriation for Title I exceeds $60 million, each State having MURLs must reserve that portion of the State's allotment attributable to the amount in excess of $60 million, in the manner required in section 102(c)(2) of the Act. Unless there is an amendment to this statutory provision, States must continue to apply the entire amount over $60 million in determining the amount each must reserve for MURL purposes.

Comment. One commenter suggested that providing a statement of the amounts each State will have available from local sources as required in § 770.24(b)(5)(i)(B), should be optional.

Response. No change has been made. The requirement at § 770.24(b)(5)(i)(B) is based on the statutory requirement in section 7 (Payments) of the Act.

Comment. Several commenters felt that § 770.24(c) was unclear because it requires States to describe only how they plan to use funds, but does not require States to list specific approved construction projects to be funded with Public Library Construction grants.

Response. A change has been made. Section 770.24(c) now reads: "In the case of an application for a Public Library Construction grant, the State shall also include in its annual program a description of how the State plans to use funds that year, consistent with the long-range program, for approved construction projects in areas of the State lacking the library facilities necessary to provide adequate library services".

Comment. Several commenters reasoned that the use of "in-kind contributions" toward meeting the State match requirement was permissible under Public Library Construction grants since § 770.24(b)(5)(ii) provides that in the case of an application for library services grant a State may not include "in-kind contributions" among the amounts the State declares it will have available for expenditure from State or local sources, whereas § 770.24(c) contains no such prohibition.

Response. No change has been made. As a result of the 1984 Amendments to the LSCA, adding the new subsection 202(b), in-kind contributions may be included by States in calculating the non-Federal share of the cost of Public Library Construction projects. ("Third party in-kind contributions", as defined in 34 CFR 74.51, "means property or services which benefit a grant supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant".) Section 202(b) of the Act states that: "For the purposes of subsection (a), the Federal share of the cost of construction of any project assisted under this title shall not exceed one-half of the total cost of such project." The Conferees' explanation of why the Federal share can not be greater than one-half for any individual Public Library Construction project, is that: ". . . it will allow Federal funding to go further in financing construction projects and will hopefully encourage private sector involvement in raising construction funds for libraries." (See H.R. No. 1075, 98th Cong., 2d Sess. 17 (1984), also printed at 130 Cong. Rec. H 10137, daily ed. September 25, 1984)

Section 770.30 What Special Conditions Does the Secretary Apply in Considering an Application for a Grant?

Comment. One commenter noted that in § 770.30, reference is made to maintenance of effort requirements but not to matching requirements.

Response. No change has been made. The provision which contains the matching requirements for States receiving Library Services grants is § 770.40(b), which describes a State's financial obligations regarding the matching of Federal grant funds for States receiving funds under the Library Services grant program.

Section 770.40 What are a State's Financial Obligations Under a Library Services Grant?

Comment. Several commenters asked in reference to § 770.40(c)(1) if three separate maintenance of effort requirements were being imposed for State institutional library services, library services to institutionalized individuals, and library services to the physically handicapped.

Response. No change has been made. Pursuant to the amendments to section 103 of the Act, adding the words "and institutionalized individuals" after the word "handicapped" in clause (3), effort must be maintained for State institutional library services, and for library services to the physically handicapped and institutionalized individuals. The Amendments do not contain a definition of the term institutionalized individuals. The Conference Report contains no clarification of what is meant by the term. However, the Secretary does not consider that three separate maintenance of effort requirements have been imposed by the amendment, rather that effort must be maintained in the areas of State institutional library services, as well as in the area of library services to physically handicapped individuals and to those individuals institutionlized in facilities other than State facilities.

Comment. One commenter asked in reference to § 770.40(c)(2) whether in the event that the Federal allocation for Library Services is reduced the total amount would be ratably reduced by the same percentage as the allocation reduction, or whether one of these areas could be reduced by a greater amount than the other as long as the *overall* reduction was the same as the percentage of the allocation reduction.

Response. A change has been made. Section 770.40(c)(1) of these regulations now provides that the amount spent from Federal, State and local sources for State institutional library services and for library services to the physically handicapped and to institutionalized individuals must be no less than the amount spent from those sources for those services during the second year preceding the year for which the grant is made. Under the 1984 Amendments to the LSCA, section 103 of the Act was amended to provide that when the amounts of "Federal allocations to the State are reduced" the amount which the State is required to expend pursuant to section 103(3) (that is, for State institutional library services and library services to the physically handicapped and to institutionalized individuals), must be ratably reduced. (Section 103(7)). Pursuant to this statutory amendment, the percentages of expenditure reductions for these services may be reduced only by amounts which equal the percentage of the Fedral allocation reduction for Title I (Library Services).

Comment. One commenter felt that § 770.40(b) was too restrictive since section 7(a) of the Act states that ". . . the Secretary shall pay to each State an amount equal to the Federal share of the total sums expended by the State and its political subdivisions in carrying out such plan, . . .". The commenter felt that the Federal share should be based on the overall Title I program, not just particular services financed under the grant for that fiscal year.

Response. A change has been made. Section 770.40(b) of the final regulations provides: "The State shall provide the difference between—(1) The cost of carrying out the State's annual program; and (2) The Federal share of these costs, as specified in section 7(b) of the Act".

Comment. In reference to the provision on "major urban resource libraries" (MURLs) in § 770.40(d), one commenter raised the following: if the Federal appropriation is reduced from that of the previous year, or falls below the $60 million could MURL funding be eliminated.

Response. No change has been made. The first sentence after clause 7 of section 103 of the Act provides that the amount paid to a MURL may not be reduced below the amount paid to such library in the preceding fiscal year. Therefore, if the Federal appropriation is reduced from the amount appropriated in the preceding fiscal year, the State must nonetheless pay the MURL the same amount paid in the preceding fiscal year. In reference to the second question, if the appropriation for Title I falls below $60 million, the MURL provisions of the Act would not apply.

Comment. One commenter wanted to know, if under the provisions of § 770.40(d) a State contracted with a MURL for two consecutive years and the *MURL* fails to expend its grant fully in the second year, would the State be challenged by the Department as failing to meet maintenance of effort.

Response. No change has been made. There are no provisions in the Act requiring maintenance of effort by individual MURLs, although there is the requirement that States not reduce the amount paid to individual MURLs from one year to the next (See section 103(7) of the Act).

Comment. One commenter believed that the regulations should incorporate the penalties or consequences of failure to comply with maintenance of effort requirements.

Response. No change has been made. Neither penalties for nor consequences of failing to comply with maintenance of effort are contained in the regulations as none are contained, as such, in the Act. Note, however, that the Secretary is not authorized to make payment to a State under Title I unless he has determined that State and local funds are available for expenditure as specified in section 7(a)(1) and (a)(2) of the Act, and that this provision is contained in § 770.30(b) of these regulations.

Section 770.41 What Are a State's Financial Obligations Under a Public Library Construction Grant?

Comment. Several commenters asked if the requirement in § 770.41(b), that at least one-half of the total cost of an individual project must be supplied by State or local sources or both, could be met by using funds available from another local project that had local funds in excess of 50 percent, or was funded entirely with local funds.

Response. No change has been made. Section 202(b) of the Act provides that ". . . the Federal share of the cost of construction of any project assisted under [Title II (Public Library Construction)] shall not exceed one-half of the total cost of such project". The Conference Committee noted that the inclusion of Section 202(b) of the Act ". . . will allow Federal funding to go further in financing construction projects and will hopefully encourage private sector involvement in raising construction funds for libraries." (H.R. Rep. No. 1075, 98th Cong., 2d Sess. 17 (1984), also printed at 130 Cong. Rec. H 10137, daily ed. September 25, 1984). The amendment requires that each project be funded with *at least* 50 percent non-Federal funds. However, as is specifically stated in the Conference Report, "there is no limitation on the amount of State funds which go into Title II LSCA that may be used for individual construction projects", nor does the Act prohibit, or in any way limit, the non-Federal sources from which or the amounts of local dollars with which such projects may be funded.

Section 770.42 What Other Financial Obligations Does a Recipient Have Under a Public Library Construction Grant?

Comment. Several commenters suggested that § 770.42(c) provide a definition of "good cause". Language such as, "Good cause shall include the transfer of the Federal interest to another library facility of quality at least equal to that of the LSCA facility" was recommended.

Response. No change has been made. Section 202(c) of the Act provides "If, within 20 years after completion of construction of any library facility which has been constructed in part with funds made available under this title—(1) the recipient (or its successor in title or possession) ceases or fails to be a public or nonprofit institution, or (2) the facility ceases to be used as a library facility, unless the Secretary determines that there is *good cause for releasing the institution from its obligation*, the United States shall be entitled to recover . . .". (emphasis added). This section of the Act provides the Secretary with broad discretion to determine whether or not there is "good cause" based on relevant facts and information provided by each institution, and the Secretary will make this determination on a case by case basis.

Comment. Several commenters asked whether the provisions in section 202(c) of the Act relative to the recovery of portions of the equity interest within 20 years after completion of the construction of any library facility, apply retroactively to Public Library Construction projects completed in the 1960's and whether they apply retroactively to construction projects completed under Emergency Jobs Act funding.

Response. No change has been made. Section 202(c) applies to any facility constructed prior to or after the date of enactment of the 1984 Amendments to the LSCA with funds made available under Title II of the LSCA. (Section 112 (b)(2), Pub. L. 98–480). Therefore, section 202(c) applies to construction projects completed with funds appropriated under the Emergency Jobs Act (Pub. 98–8) and authorized under that Act to be administered under the provisions of Title II (Public Library Construction), as well as to construction projects completed in the 1960's, as is made clear in § 770.42(d) of these regulations.

Comment. One commenter asked if § 770.42(a) took precedence over § 75.603 (EDGAR), "Grantee's title to site", and if so, suggested that § 75.603 be changed to conform to § 770.42(a).

Response. No change has been made. Section 770.42(a) reiterates the statutory requirements contained in section 202(c) of the Act which provides in pertinent part that if, within 20 years after completion of construction of any library facility which has been constructed in part with funds made available under Title II (Public Library Construction), a facility ceases to be used as a public library facility the United States shall be entitled to a monetary recovery. These program-specific statutory and regulatory provisions would, in any event, supersede 34 CFR 75.603.

Comment. One commenter asked whether continuing public library construction projects funded with appropriations from the Emergency Jobs Act (Pub. L. 98–8), and authorized to be administered under the provisions of Title II, and therefore in accordance with Title II regulations that were in effect prior to September 30, 1984, would continue to have those regulations apply to them. If so, the commenter also asked whether those would be published in Title 34 of the Code of Federal Regulations.

Response. No change has been made. Public library construction projects approved by the States through September 30, 1984, under the provisions of Title II and thus in accordance with the Title II regulations in effect at that time, continue to have *those* regulations apply to them. However, those regulations will not be republished.

Section 770.43 What Administrative Costs are Allowable Under This Program?

Comment. One commenter asked if the cost of an audit is considered a direct or indirect cost.

Response. No change has been made. The question is not relevant to these regulations and the commenter is directed to 34 CFR Part 74 Appendix C, which contains principles for determining the permissibility of costs applicable to grants such as those awarded under Title II of the LSCA, including guidelines for determining whether allowable costs, such as the costs of certain audits, are direct or indirect.

Comment. One commenter asked whether State library administrative agencies are required to report the amount of State funds expended in the course of administering the LSCA program.

Response. No change has been made. Section 8 of the Act provides that: "A State may expend funds received under titles I and II for administrative costs in connection with programs and activities carried out under titles I, II, and III, but such administrative expenditures under such titles for any fiscal year may not exceed the greater of (1) 6 per centum of the sum of the amounts allotted to such State under such titles for such fiscal year, or (2) $60,000". The reporting of State funds expended on the administration of the LSCA program is not a statutory requirement, nor is it a requirement in these regulations.

Comment. One commenter asked if indirect cost charges under a State indirect cost allocation plan would have to be reported as an "administrative expense". In the commenter's opinion, if that were the case, the effect would be to create a cap or ceiling on allowable indirect costs, which would be in conflict with OMB Circular A–87 "Cost Principles for State and Local Governments".

Response. No change has been made. Section 102(b)(1) of the Act allows for funds to be used "to pay the cost of

administering the State plans submitted and approved under this Act (including obtaining the services of consultants)". 34 CFR Part 74, Appendix C(II)(A), sets standards for selected items of cost which apply whether the cost is treated as direct or indirect; 34 CFR Part 74, Appendix C(II)(B), provides definitions of cost such as those for advisory councils, audits, legal expenses, materials, meetings and conferences, printing and reproductions, and travel, incurred in the course of administering a program. Thus some of the indirect charges are reportable under sections 8 and 102(b)(1) of the Act. The concept of a cap on indirect costs is not in conflict with OMB Circular A–87 because, pursuant to section A(1) of Circular A–87, the principles "are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law". Section F(3)(a) of Circular A–87 states also that "Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Circular, whichever is the smaller". Since section 8 of the Act puts a limitation of 6 percent or $60,000 on Federal LSCA funds used to administer the LSCA State-Administered Program, and since this statutory limitation overrides the provisions in A–87, for purposes of administering the LSCA State-Administered Program, there is, in fact, a cap on allowable costs for administration.

Parts 771 and 772—Library Services and Construction Act Basic and Special Projects Grants to Indian Tribes and Hawaiian Natives Programs

Comment. One commenter was pleased that Title IV, (Library Services for Indian Tribes), had become law but was of the opinion that although a means has been found to develop or improve public library services, there was now a need to make certain that these goals would be reached under Title IV and that the title is not abused. Secondly, the commenter suggested that a statement be placed into the regulations for Title IV to clearly state that Title IV funds should not be used to supplant funding from other titles of the LSCA.

Response. No change has been made. The regulations for Parts 771 and 772 implement the statutory provisions in Title IV of the Act and other pertinent parts of the statute relating to Indian tribes and Hawaiian natives. In response to the commenter's concern with potential supplanting of Title IV funds, it should be noted that under section 402(b) of the Act: "any tribe that supports a public library system [must] continue to expend from Federal, State, and local sources an amount not less than the amount expended by the tribe from such sources for public library services during the second fiscal year preceding the fiscal year for which the determination is made." This provision is reflected in §§ 771.40 and 772.41 of these regulations.

Comment. One commenter felt the term "near reservations" as used in this part of these regulations needs to be clearly defined in the definitions section of these regulations.

Response. No change has been made. Indian tribes and Indians located in the States of California, Oklahoma, and Alaska, which do not have reservations, should note that sections 404 and 401(c) of the Act provide that funds under Title IV (Library Services to Indian Tribes), are to be awarded to Indian tribes for library services to "Indians living on or near reservations", or that public library services are to be provided "on or near reservations". Thus, Indian tribes and Indians in those States that would not be able to satisfy the program purposes of sections 404 and 401(c) of the Act, would not be considered for funding under either Part 771 or 772.

Comment. One commenter "strongly recommends that the wording of the proposed regulations be modified to allow Tribal Organizations and Alaska Native Regional Non-profits to apply for Basic Grants under Library Services, if so authorized by the recognized tribal governing bodies of the Indian tribes via a tribal resolution. Currently, in order for the tribes to authorize the Regional Non-profits to provide library services, the 15 recognized tribes in our region would have to: all apply and contract separately with the regional non-profit to provide services, or—all would have to pass a resolution authorizing a single tribe to apply on their behalf. This single tribe would then have to submit an application and when awarded, subcontract with the Regional Tribally authorized Non-Profit to provide services". The commenter goes on to say that either option requires a proliferation of paperwork and it is believed the regulations would deny grants to some of the tribes as they do not all have the technical expertise to develop an application.

Response. No change has been made. In pertinent part, the definition of "Indian tribe" under section 3(15) of the Act is "any Indian tribe, band, nation, or other organized group or community including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, . . .". Section 771.4(b) includes the definition for "Indian tribe" based on the statutory language in section 3(15) of the Act. The definition of "Indian tribe" addresses who is eligible to apply for grants but does not address the processes whereby applications are submitted to the Department.

Sections 771.4 and 772.4 What definitions apply to the Basic and Special Projects grants to Indian Tribes and Hawaiian Natives Programs?

Comment. One commenter suggested that the definition of "library materials" be expanded to include "computer software" as so many libraries are now purchasing and circulating computer software to users.

Response. A change has been made. In § 771.4(b), the definition for "library materials" now includes "computer software". (This revised definition is referenced in § 772.4(b).)

Comment. One commenter agreed that "restricted collection" as defined under "library materials" in § 771.4(b) "was a positive step not only because it has the potential to help preserve Native American cultures but also because it may help protect the privacy of these very same cultures". However, the commenter proposed that other tribal special collections such as a special mineral collection dealing with tribal resources also be recognized under this definition.

Response. No change has been made. The portion of the definition of "library materials" concerning "restricted collection" is based on the provision of sections 5(d)(2) and 402(c) of the Act. The definition does not specifically list what may constitute a "restricted collection", but refers to it as "library materials not placed in general circulation". Beyond this what constitutes a "restricted collection" should be determined by each Indian tribe or organization primarily serving and representing Hawaiian natives.

Comment. One commenter felt that "expanding the definition of an Indian tribe" in § 771.4(b) "to include all entities defined under the Alaska Native Claims Settlement Act unnecessarily dilutes the limited funds available. A preferable definition, according to the commenter, would limit the definition of

Indian tribes to those Federally recognized and working with the Bureau of Indian Affairs. Further, as it stands now, tribes that have one member will receive the same amount of funds as a tribe which has 170,000 members (as is the case with the Navajo Nation). The commenter proposed that a "two tiered" funding system should be developed: a guaranteed minimal sum that every tribe would be entitled to and a sum derived from a formula which would consider the population and geographical size of a tribe. In this manner, according to the commenter, tribes which have larger populations and geographical sizes would receive increasing funding. As proposed these funding levels would be arranged in such a manner as to fit within the amounts allocated for title IV.

Response. No change has been made. The definition for "Indian tribe" in § 771.4(b) is based on the language in section 3(15) of the Act.

Comment. One commenter requested clarifications under Title IV (Library Services for Indian Tribes), as to whether tribally controlled community college libraries would be eligible because the definition of "public library" under section 3(5) of the Act and § 770.4(c), excludes an institution of higher education from participation under the LSCA; and (2) whether elementary and secondary school libraries under either BIA or tribal contract could serve as a "public library".

Response. No change has been made. Under the provisions of Pub. L. 93-133 (National Foundation on the Arts and the Humanities Amendments of 1973), an amendment was made to the LSCA definition of "public library" to allow a "research library", as described under clauses (A) through (D) of section 3(5) of the Act, to receive funds under the LSCA State-Administered Program. This amendment allows a "research library" such as the Folger Shakespeare Library, the Newberry Library, the Linda Hall Library, or other research libraries not associated with an institution for higher education, to receive grants under the Library Services Program of the LSCA State-Administered Program. It would also be permissible, however, for community colleges, and elementary and secondary school libraries under the control of BIA or Tribal Councils, to serve as public libraries when these are extending library services beyond their own special clientele to the community at large.

Sections 771.10 and 772.10 What types of projects may be funded under these programs?

Comment. Several commenters felt that these sections should be clarified as they now indicate "any combination of two or more of the activities referred to in §§ 771.10(c)(7) and 772.10(c)(7) would constitute construction". Sections 772.10(c) (4) and (5) and 772.10(c) (4) and (5) refer to architectural services and acquisition of land, respectively, and the commenters felt that these two combined do not constitute construction.

Response. A change has been made. Section 771.10(c)(4) (Architectural services) and § 771.10(c)(5) (Acquisition of land) have been deleted. Sections 771.10(c)(6) and 771.10(c)(7) have been renumbered as §§ 771.10(c)(4) and 771.10(c)(5), respectively, and § 771.10(c)(5) has been changed so that it now reads: "Any combination of activities referred to in paragraphs (c)(1) through (c)(4) of this section (including architect's fees and the cost of acquisition of land)". (Section 772.10(c) has been changed in a manner consistent with the changes made to § 771.10(c).)

Section 771.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a basic grant?

Comment. One commenter believed that eligible applicants for Title IV grants should be expanded because there are 15,746 Native Americans living in their State, but none are eligible for funding under Title IV as they do not live on or near reservations.

Response. No change has been made. The regulations are based on the statutory language of the Act and the use of the phrase "living on or near reservations" in reference to the eligibility of "Indian tribes," which appears in sections 401(b)(1), 401(c), and 402(a)(9) of the Act. In addition, section 401(a) of the Act contains the following pertinent Congressional findings: "(1) most Indian tribes receive little or no funds under titles I, II, and III of this Act; (2) Indian tribes *and reservations* are generally considered to be separate nations and seldom are eligible for direct library allocations from States; (3) the vast majority of *Indians living on or near reservations* do not have access to adequate libraries or have access to no libraries at all; and (4) this title is therefore required specifically to promote special efforts to provide Indian tribes with library services". (emphasis added).

Section 771.30 What factors does the Secretary consider in making an award?

Comment. One commenter said "The factors considered by the Secretary in awarding a grant are too unrestricted. There should be rules drafted which insure that funds will be used for public library services, have the potential for making a long-term difference, and encourage tribes to actively establish permanent public library programs. According to the commenter, as it is now, the rules are so loosely structured that the potential for abuse is too great.

Response. No change has been made. Section 771.30 states: "The Secretary awards a basic grant to an applicant if—(a) The applicant meets the requirements of eligibility in § 771.2; and (b) the Secretary determines that the application meets the requirements of § 771.20." The regulations are based on the statutory language of the Act and in particular, upon the provisions in section 401(b) of the Act which states: "It is therefore the purpose of this title (1) to promote the extension of public library services to Indian people living on or near reservations; . . .".

Section 771.40 What are the financial obligations of a tribe that supports a public library system?

Comment. A commenter recommended that the maintenance of effort requirement in § 771.40 be deleted because those tribes that have shown initiative in the past and may have reduced revenues in the current year might be penalized.

Response. No change has been made. Pursuant to section 402(b), each Indian tribe applying for funds under sections 403 or 404 of the Act, must, if the tribe supports a public library system, continue to expend from Federal, State, and local sources, an amount not less than the amount expended by the tribe from such sources during the second fiscal year preceding the fiscal year for which the determination is made.

Section 772.20 How does an Indian tribe or an organization primarily serving and representing Hawaiian natives apply for a special projects grant?

Comment. One commenter felt that under § 772.20 a statement should be inserted "calling for the submission of an information copy of grant applications to the State library agency. This would assure State agency awareness of overall library planning in the State".

Response. No change has been made. Section 772.20 is based on the statutory language and provisions of Section 404

(Plans for Library Services to Indians), of the Act. Moreover, the grants awarded under Title IV are awarded as direct grants and the statute makes no provision for State library administrative agency involvement.

Section 772.50 Who must administer funds under a Special Projects grant to an Indian tribe?

Comment. Several commenters suggested that the requirement under § 772.50 that a "librarian administer funds" should be changed to require administration by tribal management, as few tribes have available to serve them persons holding a MLS or equivalent degree.

Response. No change has been made. The Act mandates, under section 5(c)(2)(a), that no funds can be allocated to an Indian tribe unless such funds will be administered by a librarian. However, the regulations do not specify the extent of training or experience required of libraries, because it is recognized that setting a single standard is not feasible because of the diversity of tribal sizes. Some larger tribes with existing libraries may well, on their own, require a MLS or equivalent degree of their librarian. For others, that requirement would be unreasonable. Therefore, although the statute and the regulations require a "librarian" for the administration of special projects grant funds, the definition of the term has been left broad enough to accommodate concerns similar to that of the commenters.

[FR Doc. 85-19404 Filed 8-15-85; 8:45 am]
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Federal Register

Friday
August 16, 1985

Part IV

Department of Education

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 503 and 548

Bilingual Education: State Educational Agency Program; Final Regulations With Invitation To Comment

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 503 and 548

Bilingual Education: State Educational Agency Program

AGENCY: Department of Education.

ACTION: Final regulation with invitation to comment.

SUMMARY: The Secretary issues final regulations with invitation to comment under section 732 of Part B of the Bilingual Education Act, as amended. Recent amendments to the Act, enacted in Pub. L. 98–511, necessitate the changes incorporated in these final regulations. The State Educational Agency Program provides financial assistance to State educational agencies (SEAs) to collect, analyze, and report data on limited English proficient persons and the educational services provided or available to such persons. The program further provides for additional services in support of programs of bilingual education funded under the Bilingual Education Act in the States.

DATES: *Effective Date:* These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations call or write the Department of Education contact person.

Date: Comments must be received on or before October 15, 1985.

ADDRESSES: Comments should be addressed to Mr. Luis A Catarineau, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, (Room 421, Reporters Building), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2922.

FOR FURTHER INFORMATION CONTACT: Mr. Luis A. Catarineau. Telephone (202) 245–2922.

SUPPLEMENTARY INFORMATION: The State Educational Agency Program is authorized under Section 732 of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965 as amended by Pub. L. 98–511, (Title VII of the Act). (20 U.S.C. 3221–3262).

This program provides financial assistance to State educational agencies (SEAs) to collect, analyze, and report data on limited English proficient persons and educational services provided or available to such persons in their States. The program further provides for additional services that support programs of bilingual education in the States. The final regulations implement Section 732 of Part B of the Bilingual Educational Act, as amended (the Act), and incorporate the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79), except as otherwise noted.

These final regulations authorize grants to State educational agencies (SEAs) for the implementation of required activities as specified in § 548.10 and additional activities as specified in § 548.11.

These final regulations provide that the amount paid to any SEA for any fiscal year shall not be less than $50,000 or greater than 5% of the total amount paid to local educational agencies (LEAs) within the State under section 721 of the Act, during the prior fiscal year.

In most instances, the data and information required in § 548.10(b) and (c) of the final regulations will have been included in LEA applications under section 721 of the Act in accordance with the requirements of section 721(c)(2). LEAs who apply for funding under section 721 of the Act are required to submit their applications to the SEAs for review and comments in accordance with the requirements of section 721(e)(4) of the Act.

The selection criteria used to award a grant are contained in § 548.32.

These final regulations will govern the award of all SEA grants in Fiscal Year 1985.

Summary of Significant Comments and Responses

On May 28, 1985, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** at 50 FR 21766. The following is a summary of significant comments received on the NPRM and the Secretary's responses.

General

Supplementary Information: Preamble

Comment. One commenter stated that it was not practical to request SEAs to submit to the secretary data that pertains to the fiscal year in which the award is made. The commenter further contended that this guidance in the preamble may be difficult or even impossible for a number of States to accomplish.

Response. No change has been made. Submitting the information to the Secretary for the fiscal year in which the award is made, will assist OEMLA in the administration of the statute. In most instances this information will have already been submitted to SEAs at an earlier date, by LEAs in their State who applied for funding under section 721 of the Act during the same fiscal year, in accordance with the requirements of sections 721 (e)(4) and 721(c)(2).

Section 548.10 What activities are required under this program?

Comment. One commenter stated that requiring the SEA to report data on students enrolled in private schools raises a question of both Federal and State authority for imposing reporting requirements on private schools. The commenter stated further that the criteria used by private schools for purposes of identification of limited English proficient students may be totally inconsistent with those prescribed by State law and the State Board of Education. The commenter proposed a change in the wording of the regulations which would make the activity to collect data on private school students, "desired" but "not required."

Response. No change has been made. The data collection under § 548.10 of the regulations is required by section 732(b) of the Act.

Section 548.30 How are funds distributed to an SEA?

Comment. One commenter stated that while § 548.30(b)(1) of the proposed regulations adheres to the statutory provisions set forth in Section 732(d) of the Act, § 548.30(b)(2) does not, because it eliminates the statutory minimum of $50,000 for Fiscal Year 1985 awards. Accordingly, the commenter recommended that paragraph (b)(2) be deleted from the final regulations.

Response. A change has been made. The language in § 548.30(b)(2) has been revised to include the statutory $50,000 minimum for these awards.

Comment. One commenter recommended that the minimum amount of $50,000 paid to an SEA should be waived until such time as funding levels are adequate to support every applicant to its full funding, since only $5,000,000 is available nationally for this program.

Response. No change has been made. This provision is a statutory requirement.

Comment. One commenter stated that budgetary inflexibility exists in the proposed regulations because separate budgets are requested for required activities under § 548.10 and additional activities under § 548.11. The commenter recommended that a single budget should be substituted for both activities under §§ 548.10 and 548.11.

Response. No change has been made. An SEA grantee is required to conduct the activities under Section 732(b) of the Act. It is necessary for the budget to be detailed to ensure that the required activities will be accomplished. SEAs have flexibility in proposing their additional budget outlining the expenditure of all additional funds.

Comment. One commenter recommended the elimination or rewording of § 548.32(a)(2)(v), which references "project participants" since the SEA "project participants" are LEAs, not individuals.

Response. No change has been made. In instances when project participants are individuals, this section applies. When project participants are not individuals, this section does not apply.

Other Changes

After a review of the proposed regulations it was determined that a survey form was not necessary to collect the data required under § 548.10; therefore, language has been deleted to conform with this change.

Certain technical revisions have been made to § 548.4—definitions, § 548.10—activities required under this program, and to § 548.32—selection criteria. No substantive changes are intended, and no amendments to applications submitted to the Department are necessary.

The required activities under § 548.10(c) include the statutorily required collection of statewide data and information concerning the number of children enrolled in elementary and secondary public schools; the number of children enrolled in elementary and secondary private schools who reside in the area(s) served by the State's local educational agencies (LEAs); the number of limited English proficient children enrolled in public and private schools in the area(s) served by the State's LEAs; method(s) used to identify the limited English proficient children; evidence of the educational condition of the limited English proficient children such as reading, mathematics, and subject matter test scores and, where available, data on grade retention rates, rates of referral to and placement in special education programs, and student dropout rates; the number of limited English proficient children enrolled in instructional programs specifically designed to meet their educational needs, and a description of those programs, and the educational services provided or available. Also required is the collection of data and information from LEAs within the State on the number of limited English proficient children enrolled in public or private schools in the area served by the LEAs who need or could benefit from programs assisted under Title VII, the number of children who are to receive instruction through the program proposed by LEAs within the State under section 721 of Title VII, and the extent of their educational needs; a statement of each applicant's ability in the State to serve children of limited English proficiency; an assessment of the qualifications of personnel who will participate in the proposed programs and of the need for further training of these personnel; the resources needed to develop and operate or improve the proposed programs; the activities that would be undertaken under the proposed programs and how these activities will improve the educational attainment of students and expand the capacity of the applicants to operate programs, such as those assisted under Title VII, when Federal assistance under section 721 of the Act is no longer available; and the specific educational goals of the proposed programs and how achievement of these goals will be measured.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Invitation to Comment

The Secretary is issuing these regulations in final form, following an opportunity for public comment in response to the notice of proposed rulemaking and consultation with interested organizations through the National Advisory and Coordinating Council on Bilingual Education (NACCBE) consistent with the requirements of the Bilingual Education Act and the General Education Provisions Act. However, the timing in the appointment of the new NACCBE members and the issuance of these particular regulations unfortunately permitted only limited consultation with NACCBE and other interested organizations. Recognizing NACCBE's role, the Secretary would like to provide a fuller opportunity for consultation with NACCBE and for further comments by interested organizations and individuals. The Secretary therefore invites further comments and suggestions on these regulations from any interested organizations or individuals and will carefully consider making appropriate amendments to these regulations, based on any further comments received, in continued consultation with NACCBE.

Interested persons may send comments to the address given at the beginning of this document until October 15, 1985. The Secretary will consider all of these comments.

All comments submitted in response to these regulations will be available for public inspection during and after the comment period in Room 421, Reporters Building, 300 7th Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunity to reduce any regulatory burdens found in these regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 548

Bilingual education, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: August 13, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by removing Part 503 and adding a new Part 548 as follows:

PART 503—BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROJECTS FOR COORDINATING TECHNICAL ASSISTANCE [REMOVED]

1. Part 503 is removed.

2. A new Part 548 is added to read as follows:

PART 548—BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROGRAM

Subpart A—General

Sec.

548.1 State Educational Agency Program.
548.2 Who is eligible to apply for assistance under the State Educational Agency Program?
548.3 What regulations apply to the State Educational Agency Program?
548.4 What definitions apply to the State Educational Agency Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

548.10 What activities are required under this program?
548.11 What additional activities may a State educational agency (SEA) provide under this program?

Subpart C—How Does an SEA Apply for an Award?

548.20 What must an SEA include in its application?

Subpart D—How Does the Secretary Make an Award?

548.30 How are funds distributed to an SEA?
548.31 How does the Secretary evaluate an application?
548.32 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Recipient?

548.40 What requirements apply to an SEA?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat. 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 548.1 State Educational Agency Program.

The State Educational Agency Program provides financial assistance to State educational agencies (SEAs) to—

(a) Collect, aggregate, analyze, and publish data and information on the limited English proficient persons in their States and the educational services provided or available to those persons; and

(b) Carry out activities designed to improve the effectiveness of programs of bilingual education in their States, such as those assisted under Tilte VII.

(20 U.S.C. 3242)

§ 548.2 Who is eligible to apply for assistance under the State Educational Agency Program?

An SEA is eligible to apply for assistance under this program.

(20 U.S.C. 3242)

§ 548.3 What regulations apply to the State Educational Agency Program?

The following regulations apply to the State Educational Agency Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), except for § 75.217(a)(3) and (c)-(e) (relating to review of applications), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 548.

(20 U.S.C. 3242(a))

§ 548.4 What definitions apply to the State Educational Agency Program?

(a) The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
EDGAR
Elementary school
Fiscal year
Grant
Grantee
Local educational agency
Nonpublic
Private
Project
Public
Secondary school
Secretary
State
State educational agency

(b) The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

(20 U.S.C. 3242)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 548.10 What activities are required under this program?

(a) An SEA that receives a grant under this program shall collect, aggregate, analyze, and publish data and information on the limited English proficient persons in the State and the educational services provided or available to those persons.

(b) The SEA shall report the data and information required to be collected under this section to the Secretary.

(c) The data and information collected under this section must include—

(1) Statewide data and information described in Section 721(c)(2) (A)-(E) of the Act, and statewide data and information on educational services provided or available to LEP persons as required by Section 732(a) of the Act; and

(2) Information, as described in Section 721(c)(2) (F)-(J) of the Act, from local educational agencies (LEAs) that have applied for Federal assistance under Title VII, Part A of the Act.

(Approved by OMB under control number 1885-0509)

(d) An SEA shall submit to the Secretary the data and information required under paragraph (c) of this section, on or before the date established by the Secretary in the **Federal Register.**

(e) An SEA shall make the data and information reported to the Secretary available for publication and dissemination to the public, particularly to persons of limited English proficiency in the State.

(20 U.S.C. 3242(b))

§ 548.11 What additional activities may a State educational agency (SEA) provide under this program?

(a) An SEA may propose any of the following additional activities:

(1) Planning and developing educational programs such as those assisted under Title VII.

(2) Reviewing and evaluating programs of bilingual education, including bilingual education programs that are not funded under Title VII.

(3) Providing, coordinating, or supervising technical and other forms of non-financial assistance to LEAs, community organizations, and private elementary and secondary schools that serve limited English proficient persons.

(4) Developing and administering instruments and procedures for the assessment of the educational needs and competencies of limited English proficient persons.

(5) Training SEA and LEA staff to carry out the purposes of programs assisted under Title VII.

(6) Other activities and services designed to build the capacity of SEAs and LEAs to meet the educational needs of limited English proficient persons.

(b) An SEA shall indicate its priorities for funding.

(20 U.S.C. 3242(c))

Subpart C—How Does an SEA Apply for an Award?

§ 548.20 What must an SEA include in its application?

An SEA shall assure the Secretary in its application that it will work cooperatively with and coordinate efforts with the Multifunctional Resource Centers, the Bilingual Evaluation Assistance Centers, the National Clearinghouse for Bilingual Education, and other LEA technical assistance service providers in the State.

(20 U.S.C. 3242)

Subpart D—How Does the Secretary Make an Award?

§ 548.30 How are funds distributed to an SEA?

(a) The Secretary may award to an SEA funds necessary for the proper and efficient conduct of a project under this program.

(b)(1) The amount paid to an SEA for any fiscal year may not be less than $50,000 nor greater than 5 percent of the total amount paid to LEAs within the State under Part A of Title VII during the fiscal year preceding the year for which assistance is sought.

(2) The amount paid to an SEA for Fiscal Year 1985 may not be less than $50,000 or greater than 5 percent of the total amount paid in Fiscal Year 1984 to LEAs under the Basic Projects Program and the Demonstration Projects Program previously authorized under section 721 of Title VII, as amended by Pub. L. 95–561 and 34 CFR Parts 501 and 502 (1984), respectively.

(c) In determining the amount of an award to an SEA the Secretary considers—

(1) The reasonableness of an SEA's proposed budget to carry out the activities required under § 548.10;

(2) The need for any of the additional activities proposed under § 548.11; and

(3) The total funds available for awards to SEAs under this program.

(20 U.S.C. 3242(d))

§ 548.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria listed in § 548.32 in deciding whether to approve a program under section 732.

(b) The Secretary awards a maximum of 100 points to evaluate the activities under § 548.10 and the additional activities an SEA may propose under § 548.11.

(c) The maximum possible score for each complete criterion is indicated in parentheses after the heading for each criterion.

(d) The Secretary awards a grant to each SEA that—

(1) Meets the applicable requirements in Section 732 and in this part; and

(2) Submits an application that achieves a score of at least 50 points under the selection criteria.

(e) The Secretary permits an SEA to modify and resubmit an application that has been disapproved under paragraph (d)(2) of this section.

(20 U.S.C. 3242)

§ 548.32 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purposes of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) The methods the SEA proposes to use to provide services; and

(vii) The SEA's plans to work cooperatively with and coordinate activities with other providers of technical assistance to avoid duplication of services to the LEAs in the State.

(b) *Capacity building.* (25 points) The Secretary reviews each application for—

(1) A clear and concise plan for developing resources, including activities such as the training of SEA personnel, that will increase the capacity of the State to—

(i) Collect and analyze data necessary to identify and promote effective educational programs and practices for limited English proficient students; and

(ii) Carry out other activities assisted under this part; and

(2) The commitment of the State to incorporate and build the proposed activities into the State's overall ongoing programs designed to improve services to LEAs in the State.

(c) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) Participation of trained personnel in fields related to the objectives of the project;

(iv) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the activities of the project, as well as other evidence that the applicant provides.

(d) *Cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective for the proposed activities under section 732.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary considers—

(i) The method used to determine effectiveness of activities included in the SEA plan;

(ii) How the applicant determines the effect of the activities on LEA operations; and

(iii) Methods used to improve delivery of services to LEAs.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(20 U.S.C. 3242)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 548.40 What requirements apply to an SEA?

An SEA shall use funds made available under this program to supplement and, to the extent practical, increase the level of funds that, in the absence of the grant, would have been made available by the State for activities required and authorized under this program. In no case may the funds made available under this program be used to supplant funds already being provided, or funds that would have been provided, by the State for these activities.

(20 U.S.C. 3242(e))

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Part V

Department of Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Education; Final Regulations

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the establishment of local contribution rates under the Impact Aid program. The rates are used by the Secretary to compute maintenance and operations assistance to local educational agencies (LEAs) in federally affected areas.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2109, Washington, D.C. 20202–6272. Telephone: (202) 245–1975.

SUPPLEMENTARY INFORMATION: Under section 3 of Pub. L. 81–874 (the Act), commonly referred to as the Impact Aid program, the Secretary provides assistance for maintenance and operations to certain LEAs. LEAs eligible to participate in the program are those providing a free public education to certain types of so-called federally connected children: that is, children residing on Federal property; children residing with a parent who is employed on Federal property; children residing with a parent who both resides on and is employed on Federal property; and children with a parent on active duty in one of the uniformed services.

The amendments to the regulations affect implementation of section 3 of the Act. This section contains the procedure used by the Secretary to calculate payments to eligible applicants. Except for the changes to the provisions governing local contribution rates and additional assistance under sections 3(d)(2)(B) and 3(d)(3)(B)(ii) of the Act, these regulations contain no other changes to the regulations implementing Pub. L. 81–874. The majority of the provisions are very similar to the interim final regulations published in the Federal Register on August 7, 1984, except that two new provisions, §§ 222.33(c) and 222.37, have been added in response to public comments.

The amount of a section 3 payment is determined by several factors: The number(s) and type(s) of federally connected children attending the schools of an applicant LEA; the applicant's local contribution rate; the amount of the annual appropriation; and the distribution formula contained in the appropriation legislation. Among other provisions, section 3 requires the Secretary to establish for each applicant a local contribution rate and, in the case of certain applicants, to determine which LEAs in their respective States are generally comparable to those applicants. The majority of applicants under the Impact Aid program are paid on the basis of the minimum rate guaranteed by the Act. These regulations governing local contribution rates and the identification of generally comparable LEAs apply to a very small but important group of applicants.

Because of a number of inquiries regarding the methods used by the Secretary to identify generally comparable LEAs, the Secretary reviewed the current practices and regulations for the program and determined that the provisions governing those methods should include objective factors that would produce more uniform results for districts with similar characteristics.

The Secretary proposed changes including such objective factors to the regulations governing local contribution rates originally in an NPRM published in the Federal Register on March 30, 1984 (49 FR 12950). The public was given 45 days in which to comment on the NPRM. After reviewing the comments that were received and adopting several of the recommended changes, the Department published interim final regulations on August 7, 1984 (49 FR 31628). They became effective on September 21, 1984. Because of the interest in these regulations, the Secretary invited the public to comment during an additional 60-day period following the publication of the interim final regulations.

The Secretary has incorporated into these final regulations several of the recommendations received from the public during the second comment period. Because this involved a number of significant changes, another NPRM was published in the Federal Register of June 14, 1985 (50 FR 25024). A 30-day public comment period was provided for this second NPRM.

Summary of Changes From the Interim Final Regulations

In response to public comments, the Secretary has changed the way LEAs may be grouped using the grade-span factor in § 222.33(a). After consulting with the applicant LEAs in its States, an SEA has the option of grouping all LEAs by the specific grade spans they serve, or it may group LEAs into elementary, secondary, or unified grade-span groups, as appropriate. LEAs serving approximately the same span of grades should not have significant differences in educational costs. This change will allow applicants in States with small numbers of LEAs serving their identical grade span to use the rate method in these regulations. A summary of the comments and responses is contained in the Appendix to these regulations.

After further review by the Department, other editorial and technical changes have been made to make the regulations clearer.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

Citation of Legal Authority:

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations)

Dated: August 13, 1985.

William J. Bennett,

Secretary of Education.

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

The Secretary amends Part 222 of Title 34 of the Code of Federal Regulations as follows:

1. The table of contents for Subpart D is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates

Sec.
222.30 Determination of local contribution rates: general.
222.31 Recommendation of local contribution rate.
222.32 Local contribution rate guaranteed by the Act.
222.33 Identification of generally comparable LEAs.
222.34 Local contribution rate based on generally comparable LEAs.
222.35 Computation of local contribution rates.
222.36 Determination of additional assistance.
222.37 Determination of compensation for unusual geographical factors.

* * * * *

Authority: Pub. L. 81-874, as amended, 64 Stat. 1100 (20 U.S.C. 236-244), unless otherwise noted.

2. Subpart D of Part 222 is revised to read as follows:

Subpart D—Generally Comparable Local Educational Agencies; Local Contribution Rates

§ 222.30 Determination of local contribution rates: general.

(a) Before computing the amount to be paid to an applicant local educational agency (LEA) under section 3 of the Impact aid program, the Secretary—after consultation with the LEA and its State educational agency (SEA)—determines the LEA's local contribution rate.

(b) The provisions in §§ 222.31 through 222.34 describe the methods that may be recommended by LEAs to be used by the Secretary in the determination of local contribution rates.

(c) Except as specified in §§ 222.31(a)(2) and 222.32(b), the provisions in §§ 222.31 through 222.37 do not apply to applicant LEAs located in—

(1) Puerto Rico;
(2) Wake Island;
(3) Guam;
(4) American Samoa;
(5) The Northern Mariana Islands;
(6) The Virgin Islands; and
(7) Any State in which there is only one LEA.

(20 U.S.C. 238(d)(3))

§ 222.31 Recommendation of local contribution rate.

An LEA shall recommend to the Secretary one of the following types of local contribution rates. If the recommended local contribution rate meets the requirements of the Act and this Part 222, the Secretary accepts the recommendation and bases the LEA's payment on that rate.

(a) *Guaranteed Minimum Rate.* (1) The LEA may recommend the local contribution rate guaranteed by the Act.

(2) In the case of a jurisdiction listed or identified in § 222.30(c), the Secretary establishes as the local contribution rate the rate guaranteed by the Act.

(3) The provisions governing this rate are in § 222.32.

(b) *Generally Comparable LEA Rate.* (1) The LEA may recommend a local contribution rate based on appropriate data from generally comparable LEAs within its State.

(2) The provisions governing this rate are in §§ 222.33 through 222.35.

(c) *"Hold-Harmless" Rate for FY 1984.* (1) For fiscal year (FY) 1984 only, an LEA that was paid on a rate above the rate guaranteed by the Act in FY 1981 may recommend a rate 37.57 percent greater than its FY 1981 rate.

(2) To compute the amount of a rate under paragraph (c)(1) of this section, multiply the FY 1981 section 3 local contribution rate by 1.3757.

(3) If, during FY 1981, the LEA received additional assistance under section 3(d)(2)(B) or 3(d)(3)(B)(ii) of the Act as well as a regular payment under section 3, the LEA may apply the 37.57 percent increase only to the rate used for determining its regular payment under section 3 for FY 1981.

(d) *"Hold-harmless" Rate for FY 1985 and Subsequent Years.* (1) If the generally comparable LEA method described in § 222.33 results in a regular section 3 rate for the current fiscal year that is at least 10 percent less than an applicant's prior fiscal year regular section 3 rate, the applicant may recommend that its rate for the current fiscal year be 90 percent of its prior fiscal year rate.

(2) To compute the amount of a rate under paragraph (d)(1) of this section, multiply the prior fiscal year section 3 local contribution rate by .90.

(3) If, during the prior fiscal year, the LEA received additional assistance under sections 3(d)(2)(B) or 3(d)(3)(B)(ii) of the Act as well as a regular payment under section 3, the LEA may apply the .90 multiplier only to the rate used for determining its regular payment under section 3 for the prior fiscal year.

(20 U.S.C. 238(d)(3); 242(b))

§ 222.32 Local contribution rate guaranteed by the Act.

(a) Except as provided in paragraph (b) of this section, the local contribution rate guaranteed by the Act is the greater of—

(1) Fifty percent of the average per pupil expenditure in the LEA's State during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed; or

(2) Fifty percent of the average per pupil expenditure in all of the 50 States and the District of Columbia during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(b) If a rate resulting from paragraph (a)(2) of this section exceeds 100 percent of the average per pupil expenditure in the LEA's State for the second fiscal year preceding the fiscal year for which the local contribution rate is being computed, the Secretary approves a local contribution rate that is equal to that State's average per pupil expenditure for the second preceding fiscal year.

(20 U.S.C. 238(d)(3)(B))

§ 222.33 Identification of generally comparable LEAs.

(a) If an LEA wishes to recommend to the Secretary a rate based on appropriate data from generally comparable LEAs within its State, the SEA for that State shall use data from the second fiscal year preceding the fiscal year for which the local contribution rate is being computed to group all of its LEAs as follows:

(1) *Grouping by Grade Span/Legal Classification Alone.* Divide all LEAs into groups that serve the same grade span and then subdivide the grade span groups by legal classification, if the Secretary considers this classification relevant and sufficiently different from grade span within the State. As an alternative grade-span division, after consultation with the applicant LEAs in the State, divide all LEAs into elementary, secondary, or unified grade-span groups, as appropriate, within the State.

(2) *Grouping by Grade Span/Legal Classification and Size.* (i) Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and legal classification, if relevant and sufficiently different from grade span and size. The SEA shall include all applicant LEAs when determining each group.

(ii) List all LEAs within each group in descending order by size as measured by average daily attendance (ADA), placing the LEA with the *largest* ADA at the top of the list. A State that does not tabulate actual annual ADA shall use the same formula for establishing ADA for the purpose of ranking LEAs by size as the Department of Education has

approved for the purpose of calculating section 3 payments for applicant LEAs in the State.

(iii) After consultation with the applicant LEAs in the State, divide each group into either two subgroups or three subgroups.

(iv) To determine the subgroups, divide each list at the point(s) that will result in as nearly equal numbers of LEAs in each subgroup as possible, so that no group is more than one LEA larger than any other group.

(3) *Grouping by Grade Span/Legal Classification and Location.* Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and, if relevant and sufficiently different from grade span and location, legal classification; then subdivide these groups by location, as determined by placement inside or outside a metropolitan statistical area (MSA) as defined by the U.S. Bureau of the Census. The Department of Education will supply SEAs with lists of MSA classifications for their LEAs, and only the classifications on those lists will be recognized by the Department for the purposes of these regulations.

(4) *Grouping by Grade Span/Legal Classification, Size, and Location.* (i) Divide all LEAs into groups by grade span (or the alternative grade-span groups described in paragraph (a)(1) of this section) and, if relevant and sufficiently different from grade span, size, and location, legal classification; then subdivide these groups by size (into two or three subgroups for each grade span, as described in paragraph (a)(2) of this section); and further subdivide these groups by location (inside or outside an MSA).

(ii) In using both the size and location factors, the SEA shall subdivide according to the size factor before the location factor.

(b) After applying the following restrictions, the SEA shall compute a local contribution rate according to the provisions of § 222.35 for each group of generally comparable LEAs identified under paragraph (a) of this section:

(1) The SEA shall not, when computing a local contribution rate, include the following heavily impacted LEAs in any group of generally comparable LEAs:

(i) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed—20 percent or more of its ADA composed of children identified under section 3(a) of the Act.

(ii) Any LEA having—in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed—50 percent or more of its ADA composed of children identified under section 3(b) of the Act, or under both sections 3(a) and 3(b) of the Act.

(2) The SEA shall not compute a local contribution rate for any group that contains fewer than 10 LEAs.

(c)(1)(i) In the case of an applicant LEA that satisfies the requirements contained in paragraph (c)(2) of this section, the SEA, in consultation with the LEA, may select a subgroup of 10 or more generally comparable LEAs from the group identified under paragraph (a)(2) of this section that includes the applicant LEA.

(ii) An LEA that otherwise meets either of the requirements of paragraph (c)(2) of this section but serves a different span of grades from all other LEAs in its State (and therefore cannot match any group of generally comparable LEAs under paragraph (a)(2) of this section) must be matched, for purposes of this paragraph (c) only, to a group using legal classification and size as measured by ADA. The group identified using legal classification and size will be the applicant's group under paragraph (a)(2) for purposes of this paragraph (c) only.

(2) In order to qualify under paragraph (c)(1) of this section, an applicant LEA must either—

(i)(A) Be located entirely on Federal land; and

(B) Be raising either no local revenues or an amount of local revenues the Secretary determines to be minimal; or

(ii)(A) Be located in a State where State aid makes up no more than 40 percent of the State average per pupil expenditure in the second fiscal year preceding the fiscal year for which the local contribution rate is being computed;

(B) Have federally connected children identified in the current year under section 3(a) of the Act equal to at least 20 percent of its total ADA; and

(C) Have federally connected children identified in the current year under both sections 3(a) and 3(b) of the Act equal to at least 50 percent of its total ADA.

(3) In the case of an applicant LEA that meets either of the requirements contained in paragraph (c)(2) of this section, the SEA, in consultation with the LEA, may select 10 or more generally comparable LEAs that share one or more common factors of general comparability with the eligible applicant LEA, as follows:

(i)(A) The SEA shall consider one or more generally accepted, objectively defined factors that affect the applicant's cost of educating its children. Examples of such cost-related factors include location inside or outside an MSA, sparsity of population, an unusually large geographical area, economically depressed area, low-income families, handicapped children, neglected or delinquent children, low-achieving children, children with limited English proficiency, and minority children.

(B) The SEA shall not consider cost-related factors that can be varied at the discretion of the applicant LEA or its generally comparable LEAs or factors dependent on the wealth of the applicant LEA or its generally comparable LEAs. Examples of factors that shall not be considered include special alternative curricular programs, pupil-teacher ratio, and per pupil expenditures.

(ii) The SEA shall apply the factor(s) of general comparability recommended under paragraph (c)(3)(i) of this section in one of the following ways in order to identify 10 or more generally comparable LEAs for the eligible applicant LEA, none of which may be heavily impacted LEAs:

(A) The SEA identifies all of the LEAs in the group that the eligible applicant LEA belongs to under paragraph (a)(2) of this section that share the recommended factor(s). If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding heavily impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The local contribution rate for the eligible applicant LEA shall be computed using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA contains a designated economically depressed area, and the SEA recommends "economically depressed area" as an additional factor of general comparability. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA identifies two subgroups, those LEAs that contain a designated economically depressed area and those that do not. The entire subgroup identified by the SEA that includes the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

(B) The SEA identifies all of the LEAs in the group that the eligible applicant LEA belongs to under paragraph (a)(2) of this section that share the recommended factor(s). The SEA then systematically orders all of the LEAs in the group that includes the eligible applicant LEA. The SEA may further divide the ordered LEAs into subgroups by using logical division points (e.g., the median, quartiles, or standard

deviations) or a continuous interval of the ordered LEAs (e.g., a percentage or a numerical range). If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding heavily impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The local contribution rate for the eligible applicant LEA shall be computed using the data for all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA serves an unusually high percentage of handicapped children, and the SEA recommends proportion of "handicapped children" as an additional comparability factor. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of handicapped children enrolled in each of the LEAs. The SEA divides the list of LEAs into four groups containing equal numbers of LEAs. The group containing the eligible applicant LEA is that LEA's new group of generally comparable LEAs if it contains at least 10 LEAs.

Example. An eligible applicant LEA serves an unusually high percentage of minority children, and the SEA recommends proportion of "minority children" as an additional comparability factor. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA lists the LEAs in descending order according to the percentage of minority children enrolled in each of the LEAs. The SEA chooses from the list of LEAs the 15 LEAs whose percentages of minority children are closest to the eligible applicant LEAs. These 15 LEAs will be the eligible applicant LEA's new group of generally comparable LEAs.

(C) The SEA may recommend and apply more than one factor of general comparability in selecting a new group of 10 or more generally comparable LEAs for the eligible applicant LEA. If the subgroup containing the eligible applicant LEA includes at least 10 other LEAs (excluding heavily impacted LEAs), it will be the eligible applicant LEA's new group of generally comparable LEAs. The local contribution rate for the eligible applicant LEA shall be computed using the data from all of the LEAs in the subgroup except the eligible applicant LEA.

Example. An eligible applicant LEA is very sparsely populated and serves an unusually high percentage of children with limited English proficiency. The SEA recommends "sparsity of population" and proportion of "children with limited English proficiency" as additional comparability factors. From the group of LEAs under paragraph (a)(2) of this section that includes the eligible applicant LEA, the SEA identifies all LEAs that are sparsely populated. The SEA further subdivides the sparsely populated LEAs into two groups, those that serve an unusually high percentage of children with limited English proficiency and those that do not. The subgroup of sparsely populated LEAs that serve a high percentage of children with limited English proficiency is the eligible applicant LEA's new group of generally comparable LEAs.

(4)(i) Using the new group of generally comparable LEAs selected under paragraph (c)(3) of this section, the SEA shall compute the local contribution rate for the eligible applicant LEA according to the provisions of § 222.35.

(ii) The SEA shall recommend the resulting local contribution rate to the Secretary and provide the Secretary a description of the additional factor(s) of general comparability and the data used to identify the new group of generally comparable LEAs.

(iii) The Secretary reviews the recommended local contribution rate and supporting data and accepts them if the Secretary determines that they meet the purposes and requirements of the Act and this Part 222.

(20 U.S.C. 238(d)(3)(A); 242(b))

(Approved by OMB under Control No. 1810-0036)

§ 222.34 Local contribution rate based on generally comparable LEAs.

(a) In selecting its recommended rate, the LEA shall use the following steps:

(1) *Step 1.* The LEA shall select the factor or factors in § 222.33 the LEA wishes to use as the basis for general comparability.

(2) *Step 2.* Using State-supplied data, the LEA shall identify within the State the entire group of LEAs (containing at least 10 LEAs exclusive of heavily impacted LEAs) that matches the factor or factors selected in step 1 and that contains the applicant LEA or would contain the applicant LEA if it were not heavily impacted.

(3) *Step 3.* The LEA shall recommend to the Secretary the local contribution rate, which the SEA has computed according to the provisions of § 222.35, based on the group identified in Step 2.

(b) A heavily impacted LEA is entitled to—

(1) Apply for assistance under the program: and

(2)(i) Recommend as its local contribution rate any type of rate described in § 222.31 for which the LEA is eligible, including a rate based on generally comparable LEAs; and

(ii) Under the generally comparable LEA method, recommend for itself the local contribution rate of any group it would be included in based on grade span/legal classification, size, and/or location, if it were not excluded as heavily impacted in paragraph (b)(1) of § 222.33.

Example. An LEA applies for assistance under section 3 of the Impact Aid Program and wishes to recommend to the Secretary a local contribution rate based on generally comparable LEAs within its State.

Characteristics of Applicant LEA

The grade span of the applicant LEA is kindergarten through grade 8 (K-8). In the applicant's State, legal classification of LEAs is based on grade span, and thus does not act to further subdivide groups of LEAs.

The ADA of the applicant LEA is above the median ADA of LEAs serving only K-8 in the State.

The applicant LEA is located outside an MSA.

Characteristics of Other LEAs Serving Same Grade Span

The SEA of the applicant's State groups all LEAs in its State according to the factors in § 222.33.

The SEA identifies the following groups:

One hundred and one LEAs serve only K-8. The SEA has identified a group of 50 LEAs having an ADA above the median ADA for the group of 101, one LEA having an ADA at the median, and a group of 50 LEAs having an ADA below the median ADA; and according to § 222.33(a)(2)(i), the SEA considers 51 LEAs to have an ADA below the median ADA.

Of the 101 LEAs in the group, the SEA has identified a group of 64 LEAs as being inside an MSA and a group of 37 LEAs as being outside an MSA.

Among the group of 50 LEAs having an ADA above the median, the SEA has identified a group of 35 LEAs as being inside an MSA and a group of 15 LEAs as being outside an MSA.

Among the group of 51 LEAs having an ADA at or below the median, the SEA has identified a group of 29 LEAs as being inside an MSA and 22 LEAs as being outside an MSA.

One LEA has 20 percent of its ADA composed of children identified under section 3(a) of the Act and, therefore, must be excluded from any group it falls within before the SEA computes a local contribution rate for the group. The LEA has an ADA below the median ADA and is located outside an MSA.

On the basis of § 222.35, the SEA computes the local contribution rate for each group of generally comparable LEAs that the SEA has identified.

Selection of Generally Comparable LEAs

The applicant LEA selects the group of generally comparable LEAs matching the factor or factors it wishes to use as the basis for general comparability.

Under the requirements of § 222.33, the applicant LEA must begin with the group that includes all LEAs with its grade span, and, if relevant and sufficiently different, legal classification. In this case, grade span and legal classification happen to be the same. Thus, the group would include 100 LEAs.

after excluding the one heavily impacted LEA.

The applicant LEA then has several options:

Option 1. The applicant LEA may select as its group of generaly comparable LEAs on which to base its recommended local contribution rate the entire group of 100 LEAs serving K–8, after excluding the one heavily impacted LEA. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 2. Instead of selecting the group of 100, the applicant LEA may select as its generally comparable group only those LEAs within the 101 (the heavily impacted LEA must be included initially for the purpose of determining the median ADA) that have an ADA above the median ADA, that is, the group of 50. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for the group be the SEA.

Option 3. Instead of selecting either of the groups described in Options 1 and 2, the applicant LEA may select as its generally comparable group only those LEAs within the 100 that are outside an MSA; that is, the group of 36, after excluding the one heavily impacted LEA. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

Option 4. Instead of selecting any of the groups described in Options 1, 2, and 3, the applicant LEA may select as its generally comparable group only those LEAs that *both* have an ADA above the median ADA for the 101 and are outside an MSA; that is, the group of 15. The applicant LEA then recommends to the Secretary as its local contribution rate the rate computed for this group by the SEA.

However, as provided in § 222.33(b)(2), if the SEA were to have identified fewer than 10 LEAs under any factor or combination of factors, the SEA would not have computed a rate for such a group. Therefore, an applicant LEA included in such a group would not be able to use this factor or combination of factors in recommending its local contribution rate to the Secretary.

The heavily impacted LEA, while included for determining the median ADA, is excluded from the computation of any group's local contribution rate. However, the heavily impacted LEA may recommend for itself the local contribution rate of any group it matches in grade span/legal classification, size, and/or location (that is, in the case of the heavily impacted LEA referred to in this example, below the median ADA and outside an MSA), provided the group contains at least 10 LEAs that are not heavily impacted.

(20 U.S.C. 238(d)(3)(A); 242(b))

(Approved by OMB under Control No. 1810-0036)

§ 222.35 Computation of local contribution rates.

Except as otherwise specified in the Act, the SEA, subject to the Secretary's review and approval, shall compute a local contribution rate for each group of generally comparable LEAs within its State that was identified using the factors in § 222.33, as follows:

(a)(1) The SEA shall compile the aggregate local current expenditures of the comparable LEAs in each group for the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(2) For purposes of this section, the SEA shall consider only those aggregate current expenditures made by the generally comparable LEAs from revenues derived from local sources. No State or Federal funds may be included.

(b) The SEA shall compile the aggregate number of children in ADA to whom the generally comparable LEAs in each group provided a free public education during the second fiscal year preceding the fiscal year for which the local contribution rate is being computed.

(c) The SEA shall divide—

(1) The aggregate current expenditures determined under paragraph (a) of this section; by

(2) The aggregate number of children determined under paragraph (b) of this section.

(d) If a rate computed under this section is lower than the rate guaranteed by the Act, the Secretary bases the LEA's payment on the guaranteed rate.

(20 U.S.C. 238(d)(3)(A))

§ 222.36 Determination of additional assistance.

(a) The provisions of this section govern an LEA that applies to the Secretary for additional assistance under section 3(d)(2)(B) of the Act, as well as applying for a regular payment under section 3.

(b) If the LEA is applying for a regular payment under section 3 based on a local contribution rate guaranteed by the Act, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers the LEA comparable to all LEAs in its State; and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(c) If the LEA, in applying for a regular payment under section 3, recommends to the Secretary a local contribution rate based on generally comparable LEAs in its State, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the same LEAs that the applicant identifies as comparable in its application for a regular payment under section 3; and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(d) In the case of an applicant that recommends the "hold-harmless" rate, the Secretary—

(1) In determining the applicant LEA's eligibility for, and the amount of, any additional assistance, considers as comparable LEAs the group of LEAs that produces the highest regular section 3 rate under the generally comparable LEA method, as described in § 222.33(a); and

(2) Establishes the rate for, and determines the amount of, the additional assistance.

(20 U.S.C. 238(d)(2)(B); 242(b))

§ 222.37 Determination of compensation for unusual geographical factors.

(a) The Secretary may determine, after reviewing the data provided under paragraph (c) of this section, that an applicant LEA cannot provide a level of education equivalent to that provided by the generally comparable LEAs on which the applicant's local contribution rate is based because the applicant's current expenditures are affected by unusual geographical factors, and, as a result, those current expenditures are not reasonably comparable to the current expenditures of the generally comparable LEAs.

(b) If the Secretary makes the determination in paragraph (a) of this section, the Secretary increases the applicant LEA's local contribution rate up to the amount the Secretary determines will compensate the applicant for the increase in its current expenditures necessitated by the unusual geographical factors, but no more than is necessary to allow the applicant to provide a level of education equivalent to that provided by its generally comparable LEAs.

(c) When applying for compensation under this section, an applicant shall provide the Secretary the following information—

(1) A specific description of the unusual geographical factors on which the applicant is basing its request for compensation under this section, and objective data demonstrating that the applicant is more severely affected by these factors than any other LEA in its State;

(2) Objective data demonstrating the specific ways in which the unusual geographical factors affect the applicant's current expenditures so that they are not reasonably comparable to the current expenditures of the generally comparable LEAs on which the

applicant's local contribution rate is based;

(3) Objective data demonstrating the specific ways in which the unusual geographical factors prevent the applicant from providing a level of education equivalent to that provided by the generally comparable LEAs on which the applicant's local contribution rate is based;

(4) Objective data demonstrating that the applicant's fiscal effort per student based on expenditures of State and local revenues for the provision of free public education in the preceding fiscal year was at least equal to the same fiscal effort per student for the second preceding fiscal year; and

(5) Any other information that the Secretary may reasonably require to make the determination under paragraph (a) of this section.

(d) The Secretary does not provide compensation under section 3(d)(3)(B)(ii) to an applicant in a State that takes such compensation into account in an equalization program that qualifies under section 5(d)(2) of the Act.

(20 U.S.C. 238(d)(3)(B)(ii); 242 (b))

(Approved by OMB under Control No. 1810-0036)

Note To Readers.—This appendix will not be codified in the Code of Federal Regulations.

Appendix—Summary of Comments and Responses to the Notice of Proposed Rulemaking

Part 222—Impact Aid Program

General

A number of commenters expressed support for the proposed regulations, particularly the new provision in § 222.33(c) which applies to certain heavily impacted applicant LEAs. Summaries of the substantive comments follow.

Comment. Several commenters stated that 30 days for comments was not enough time to undertake the analysis required for the proposed regulations. Four commenters formally requested more time.

Response. No change has been made. These regulations have been promulgated in compliance with the rulemaking provisions of section 431 of the General Education Provisions Act, 20 U.S.C. 1232, which, among other things, allow the Department to provide a 30-day period for public comments. The Secretary believes that 30 days is adequate because the proposed regulations contain only one major change from the interim final regulations. This change is the new provision for certain heavily impacted LEAs in § 222.33(c) and was added in response to public comments. The proposed regulations were mailed in advance of publication to the applicant LEAs that the Department believed might qualify under § 222.33(c) so that those LEAs could begin their review of the new provision. The other major provisions have been offered for public comment for a total of 135 days over a period of 15 months.

Comment. One commenter contended that the regulations should not take effect until FY 1986 because of the "hold-harmless" rate provision in the 1985 appropriation act and because the fiscal year for LEAs has ended and they have already received and spent their payments.

Response. No change has been made. These regulations will become effective for FY 1985. This effective date means that qualified LEAs will be able to take advantage of the new special provision for certain heavily impacted LEAs in § 222.33(c). Also, any LEA that can qualify for a local contribution rate under the regulations that is higher than the rate it would receive under the "hold-harmless" provision in the appropriation act will be able to receive that higher rate. No LEA will receive a lower rate because of the regulations taking effect for FY 1985.

Comment. One commenter stated that the Department should "take all steps to assure Indian students receive their fair entitlement" and "Indian parents and community organizations should exercise a meaningful role in the budgetary process and other critical areas determining the quality and quantity of educational programs available to their children." Another commenter asserted that many Indian LEAs did not have adequate time or information to analyze and respond to these regulations. In the commenter's view, the Department's action on the regulations was a violation of the Department's own policy, and certain legal requirements, to ensure the participation of Indian parents and tribes.

Response. No change has been made. The Department is committed to operating all of its programs under the terms and conditions specified in the authorizing legislation and the annual appropriation legislation. This means that all applicants for Impact Aid funds receive the full amounts that they are entitled to receive under the laws in effect at the time.

The Department has attempted to solicit the widest possible participation from the interested public in the development of these regulations. Usually, publication in the **Federal Register** is considered adequate notice of a proposed change in Federal policy. However, the Department mailed over 4,000 copies of the regulations directly to applicant LEAs (including Indian LEAs), SEAs, the Congress, and other interested individuals as soon as the copies were available. In addition, these regulations were discussed by Department staff at a series of meetings beginning with those held in December 1984 with SEA representatives, and including the March 1985 conference of the National Association of Federally Impacted Schools, and the annual National Indian Impaction conference held in June. In addition to these efforts, Department staff have provided technical assistance freely to applicants whenever they have requested help in applying the provisions in the regulations. The Secretary believes that the Department's policies have been fully implemented in the development and publication of these regulations.

The Impact Aid program law has a special provision that specifically requires LEAs that receive funds under this program on behalf of children residing on Indian lands to solicit parent and community involvement in the development of the curricular designed to serve these children. Commenting on regulations such as these is one way that Indian parents and community organizations can also influence policies that affect their children's educational programs. They can accomplish this too by keeping informed of activities at all levels of government that may affect the programs, and generally communicating their views to government agencies and congressional representatives.

Comment. One commenter pointed out that these regulations failed "to address critical problems in the Impact Aid program, such as ambiguities relating to funding under section 3(d)(2)(B)."

Response. No change has been made. The subject of these regulations is the establishment of local contribution rates, and they were not intended to implement section 3(d)(2)(B) of the Act. The Secretary may publish regulations concerning section 3(d)(2)(B) in the future.

Comment. One commenter believed that the Department should commit itself to reviewing the regulations after they have been in effect for one year to ensure that they meet the needs of Indian districts.

Response. No change has been made. Program policies are routinely reviewed to make sure that they comply with the requirements and intent of the Act and are effective and appropriate. The policies contained in these regulations

will also be subject to the same kind of Departmental review.

Section 222.30 Determination of local contribution rates: general.

Comment. One commenter asserted that the "hold-harmless" provision contained in these regulations "suffers the same infirmities as the corresponding provision for 1984. That is, the provision perpetuates the use of rates formerly derived in violation of the Impact Aid Law," continuing the "inequitable levels of funding obtained in 1981, due to the operation of the $50.00 rule."

Response. No change has been made. The "hold-harmless" provision has been included in these regulations as a result of numerous public comments. Further, many comments were received during the most recent comment period commending the Department for including the provision. The Secretary continues to believe that the "$50 rule" was a valid method under the Act and previous regulations for determining which LEAs are generally comparable to an applicant. Two recent court decisions have upheld this view. Use of that rate method has been discontinued, however, because the Secretary believes that the method contained in these regulations is sounder and more equitable.

Comment. One commenter objected to the Department prohibiting applicants from basing a rate under the "hold-harmless" provision on a rate established under section 3(d)(3)(B)(ii) and, in 1984, prohibiting applicants in states with unorganized territory from using the generally comparable LEA rate method at all, including the "hold-harmless" provision.

Response. No change has been made. The Secretary has determined that it would not be appropriate to apply the "hold-harmless" provision to rates established under section 3(d)(3)(B)(ii) or section 3(d)(2)(B) of the Act because applicants must apply for rates under these sections every year and must demonstrate financial need, among other requirements, for an increased rate to be approved under either section. Although an LEA may be eligible one year for an increased rate under one of these sections, it may not be eligible the following year.

The Department also has not made the generally comparable LEA rate method retroactively available to LEAs in States with unorganized territory for FY 1984 because the Act provides the Secretary the discretionary authority to assign the guaranteed minimum rate to LEAs in States with unorganized territory.

Section 222.31 Recommendation of local contribution rate.

Comment. One commenter requested that the Department modify the "hold-harmless" provision in § 222.31(d) so that local contribution rates for small Indian districts will not decrease by more than 5 percent from their prior year's rates, rather than the 10 percent currently in the regulations. Another commenter suggested that the regulations guarantee that "no LEA shall, by virtue of the establishment of a rate under the hold harmless provision, suffer a total LEA budget decrease of more than four percent."

Response. No change has been made. The Secretary believes that the 10 percent "hold-harmless" provision allows LEAs an adequate transition to the generally comparable LEA rate method contained in these regulations. Further, the "hold-harmless" provision in § 222.31(d) will not be effective until FY 1986 because of the "hold-harmless" provision in the FY 1985 appropriation act. This should give applicant LEAs sufficient time to adjust their budgets, if necessary, to avoid disruption to their school programs. The Secretary has no authority to control the amount of an applicant's payment in the manner suggested by the second commenter.

Section 222.33 Identification of generally comparable LEAs.

Comment. One commenter stated that the regulations should be amended "to require the SEA to inform the LEAs of the processes and rationale used at every stage of the procedures described in §§ 222.33(a) and 222.33(b)," and to define the term consultation "in a way that assures LEAs will receive advance written notice of the processes and rationale the SEA intends to use."

Response. No change has been made. The majority of the procedures required of the SEA in §§ 222.33 (a) and (b) are not discretionary in nature. Where they are, as in the division of LEAs by grade span and size, the Secretary does require the SEA to consult with the applicant LEAs in its State. However, the Secretary does not believe that it is appropriate or necessary to specify a particular form for this consultation.

Comment. One commenter again declared that ADA will, in effect, be the only criterion used to identify generally comparable LEAs even under the new special provision for certain heavily impacted LEAs.

Response. No change has been made. The generally comparable LEA method in these regulations is based on a number of factors of general comparability including grade span, legal classification (if the Secretary regards this classification as relevant and sufficiently different from other factors used), size as measured by ADA, and location as determined by metropolitan status. No option in these regulations uses ADA as the only factor on which comparability is determined. Heavily impacted LEAs that qualify to use the special provision in § 222.33(c) may use any of a variety of cost-related factors for identifying their groups of generally comparable LEAs in addition to grade span/legal classification and size.

Comment. One commenter stated that his LEA could not use any of the options under the generally comparable LEA rate method because there are fewer than 10 LEAs in the State with the same grade span and legal classification. This commenter, as well as several others, requested that the regulations be amended to allow the use of groups with fewer than 10 generally comparable LEAs.

Response. A change has been made. While the minimum number of 10 generally comparable LEAs has not been changed, the first commenter's circumstances have been addressed. The regulations have been amended to allow an SEA, in consultation with the applicant LEAs in the State, to divide all LEAs into elementary, secondary or unified grade-span groups. The Secretary believes that, for general comparability purposes, it is appropriate to allow the grouping of LEAs serving approximately the same span of grades. In the case of the first commenter, this change will mean that the 12 other LEAs in his State serving grades K–12 or 1–12 that are classified as "city" districts can be grouped together under § 222.33(a)(1).

Comment. One commenter requested that the regulations be amended to include a provision allowing the Secretary to exempt Indian LEAs from the requirement that their groups of generally comparable LEAs contain at least 10 LEAs. (Several other commenters objected generally to the requirement that a group contain at least 10 LEAs.) The commenter suggested that the provision also include authority for the Secretary to adjust downward any rate found to be inconsistent with the purposes of the Impact Aid program.

Response. No change has been made. The Secretary does not believe that such an exemption is warranted because this sytem of determining local contribution rates provides applicants with widely varying circumstances sufficient flexibility to identify generally comparable LEAs. The requirement in the regulations for a minimum number of

LEAs in a group is consistent with the view expressed in the legislative history that the larger the number of comparable LEAs on which a local contribution rate is based, the more objective and equitable the resulting rate will be. The commenter's last suggestion has not been adopted because the Secretary is required to calculate local contribution rates according to a formula specified by the Act which does not allow the Secretary to adjust rates in the manner suggested by the commenter.

Comment. One commenter complained that dividing all LEAs by size into only two groups would adversely affect smaller schools. The commenter requested that SEAs be allowed to use their discretion when dividing LEAs into groups based on size.

Response. No change has been made. Section 222.33(a)(2) allows an SEA, after consulting with the applicant LEAs in its State, to divide each grade span/legal classification group into either two or three subgroups. This option of dividing into two or three subgroups was proposed in comments on the interim final regulations, published August 7, 1984.

Comment. One commenter contended that the qualifier "relevant" should not be applied to the factor of legal classification in § 222.33(a)(1), and presumably in the other sections in which it is used, since the term "legal classification" is not modified in such a way in the legislative history of the Act. The commenter stated that the legislative history indicates that legal classification is the first factor that must be used to identify generally comparable LEAs, and that it is to be considered relevant as a matter of fact.

Response. No change has been made. While the legislative history presumes that legal classification under State law is relevant in identifying generally comparable LEAs for the purpose of establishing local contribution rates, this is not the case in many States. Where it does have a relationship to educational costs, these regulations require its use in that identification of generally comparable LEAs. In many States, it will not be necessary to use legal classification, either because it is based on grade span, size, or metropolitan location and would be redundant under these regulations, or because it has no bearing on an LEA's ability to raise local revenues or on educational costs.

Comment. One commenter questioned whether his school district would qualify under § 222.33(c)(2)(i) if small amounts of property in the district, which is located entirely on an Indian reservation, are privately owned. Another commenter recommended amending the regulations so that LEAs with small amounts of private property would qualify under § 222.33(c)(2)(i).

Response. No change has been made. Section 222.33(c)(2)(i) was designed to apply to the most extreme cases where LEAs have no taxable land within their boundaries. To be eligible under this section of the regulations, the LEA must be composed entirely of Federal land. The presence of any privately owned land in the district will disqualify an LEA under this section. However, it is possible that the first commenter's LEA, and others like it, would meet the criteria under § 222.33(c)(2)(ii) and, therefore, would qualify to apply for a special local contribution rate under that section.

Comment. One commenter requested that the less than 40 percent State aid requirement in § 222.33(c)(2)(ii) be eliminated because it would prevent too many LEAs from using the new special provision for certain heavily impacted LEAs.

Response. No change has been made. The Secretary believes that these regulations work well for the majority of applicants under this program. Section 222.33(c) is intended to apply to those LEAs whose extreme circumstances warrant special treatment. The requirements of this section, including the one that an LEA be located in a State that provides, on the average, 40 percent or less of the average per pupil expenditure, are designed to identify a limited number of LEAs with unusual circumstances that result in a restricted ability to raise local revenues and a greater dependence on funds received under the Impact Aid program.

Comment. One commenter stated that the "requirement of a 'b' student presence should be eliminated from § 222.33(c)(2)(ii)(C)."

Response. No change has been made. To qualify for the special rate provision, an LEA must have "a" children equal to at least 20 percent of its total ADA and federally connected children totalling at least 50 percent of its total ADA. The 50 percent federally connected children can include "b" children as well as "a" children, but an LEA is not required to have any "b" children to be eligible under this provision.

Comment. One commenter requested that an LEA qualifying for a special local contribution rate under § 222.33(c) be allowed to identify its subgroup of generally comparable LEAs by first applying a non-wealth related factor and then dividing by size.

Response. No change has been made. The Secretary believes that size as measured by ADA has a significant influence on educational costs and should be one of the first factors applied in identifying subgroups of generally comparable LEAs.

Comment. Two commenters requested that the Secretary amend § 222.33(c) to allow the heavily impacted LEAs eligible under that section to identify their generally comparable LEAs from any of the groups under § 222.33(a) and not just from the second group based on grade span/legal classification and size.

Response. No change has been made. The Secretary believes that the two factors of grade span/legal classification and size are particularly relevant to educational costs and should be used by all of the heavily impacted LEAs eligible under § 222.33(c).

Comment. One commenter asserted that the distinction between allowable and non-allowable factors under § 222.33(c) would penalize Indian schools that are attempting to upgrade their curricula, and that the concept of local control "means that the federal government has no business determining which educational programs are variable at the instance of the school board and which are not." The commenter further stated that there is no objective, uniform way to determine allowable cost factors, especially in States providing relatively high amounts of State aid.

Response. No change has been made. While the *programs* that serve children with special needs cannot be used as a factor for identifying generally comparable LEAs under § 222.33(c), the presence of *children* requiring these programs can be used as a factor. The Secretary believes that it is possible and appropriate to distinguish between those factors that are cost-related and those that are not. Making this distinction is consistent with the Secretary's broad discretion to identify LEAs that are generally comparable to applicants. The validity of the factors that may be used under § 222.33(c) and their relationship to school costs are widely recognized by school finance authorities. The level of State funding does not alter the factors that affect LEAs' costs. It should be pointed out, however, that applicants in States providing relatively high levels of State aid are not eligible to use the special provisions of § 222.33(c).

Comment. Two commenters asserted that it would be impossible to identify 10 non-heavily impacted LEAs using objectively defined criteria that are in any way comparable to their LEAs. These commenters recommended that in cases such as theirs, applicants should be allowed to show, using a process

similar to that described in § 222.37 (the provision governing the determination of compensation for increased expenditures as a result of geographical factors), how socially-related factors have increased their expenditures.

Response. No change has been made. The authority to provide compensation for geographical factors is found in section 3(d)(3)(B)(ii) of the Act. There is no similar provision governing additional compensation for the types of socially-related factors mentioned by the commenters. However, such social factors may be used to identify a group of generally comparable LEAs by an applicant qualifying for a local contribution rate under § 222.33(c). It is not necessary for an applicant to identify a group of 10 LEAs that are identical in their circumstances. Instead, it is only necessary for an applicant to identify a group of LEAs that share a cost-related factor to some degree. The commenters may want to consider alternative ways of applying the factors they mention to identify groups of generally comparable LEAs. The examples found in § 222.33(c) should be helpful in suggesting ways of applying appropriate factors so that a group of at least 10 LEAs could be identified. Applicants should feel free to contact Department staff for assistance in utilizing this special provision.

Comment. Four commenters stated that the special provision in § 222.33(c) does not adequately address the needs of the applicants whose boundaries are coterminous with the boundaries of Federal military installations because the effect of the regulations is to reduce their local contribution rates to the statutory gruaranteed minimum rate (in their case, one-half the national average per pupil expenditure). They suggested that for such districts the Secretary either allow the LEAs to select 10 comparable LEAs from their subgroup to determine their local contribution rates, or assign these LEAs local contribution rates equal to 100 percent of the national average per pupil expenditure. Another commenter simply asserted that the special provision fails to address the needs of heavily impacted LEAs.

Response. No change has been made. In the preamble to the notice of proposed rulemaking published June 14, 1985, the Secretary made a special request for specific suggestions for an alternative procedure based on objective factors if commenters did not find that the new provision in § 222.33(c) met the needs of the applicants for whom it was designed. While objecting to the provision as it appeared in the regulations, these commenters have failed to provide a specific, substantive alternative as requested by the Secretary. The use of cost-related factors to identify groups of generally comparable LEAs makes the procedure in § 222.33(c) more objective, systematic, and statistically reliable than simply allowing the selection of any 10 LEAs without reference to any criteria, as the commenters suggested. If the commenters are able to use objective factors to identify a group of 10 generally comparable LEAs that spend an amount equal to the national average per pupil expenditure from local sources and the Secretary finds that the selection process meets the purposes of the Act and the requirements of these regulations, the Secretary will approve that amount for their local contribution rates.

Section 222.35 Computation of local contribution rates.

Comment. Four commenters requested that payments be made on the basis of average daily membership (ADM) instead of average daily attendance (ADA). One commenter suggested that payments, especially to Indian LEAs experiencing high truancy rates, should be based on no less than 95 percent of an applicant's ADM. The commenter contended that because the Department does not use current ADA data, his district would not benefit from this year's improved attendance.

Response. No change has been made. The Act requires that section 3 payments be calculated using the number of federally connected children in average daily attendance in the applicant's schools. The Department uses the most current and best ADA data available to calculate payments. Several years ago, in an effort to reduce the paperwork burden on applicants, a decision was made not to require applicant LEAs to report final ADA data at the end of the school year. Instead, a ratio of the prior year's attendance to membership is applied to the current year's membership to determine the ADA used to calculate an applicant's payment. Any improvement in this year's attendance is reflected automatically in the following year's payment.

Comment. Three commenters objected to eliminating, for military coterminous LEAs, local funds spent for capital outlays and payments toward the retirement of regular and revenue bonds for the calculation of their local contribution rates.

Response. No change has been made. Expenditures for capital outlays and debt service are specifically excluded by the Act from the calculation of the local contribution rate for any applicant.

Section 222.37 Determination of compensation for unusual geographical factors.

Comment. One commenter stated his belief that § 222.37 apparently allows only one LEA in each State to qualify for an increased local contribution rate under section 3(d)(3)(B)(ii) of the Act. The commenter further stated that this result contradicts the provision in the Act which offers increased funding to all the LEAs that qualify, no matter how many there may be.

Response. No change has been made. Section 222.37 allows more than one LEA in each State to qualify for increased funding due to unusual geographical factors under section 3(d)(3)(B)(ii), as long as each qualifying LEA uses a different factor or factors. Consistent with the legislative history, § 222.37(c)(1) requires that an applicant demonstrate that it is more severely affected by its particular factor or factors than any other LEA in its State. *See* H. Rept. 2287, 81st Cong., 2d Sess. 14 (1950).

Comment. One commenter contended that § 222.37 utilizes an analysis more appropriate to an eligibility determination under section 3(d)(2)(B) of the Act than under section 3(d)(3)(B)(ii). The commenter did not believe it would be necessary to show that an applicant cannot maintain a level of education equivalent to that provided by generally comparable LEAs in order to qualify for funding under section 3(d)(3)(B)(ii) of the Act.

Response. No change has been made. The legislative history specifically provides that "[t]he amount of the increase [in a section 3(d)(3)(B)(ii) applicant's local contribution rate] will be the amount necessary to enable it to maintain a level of education equivalent to that maintained in the school districts determined by the [Secretary] to be [generally] comparable." *See* H. Rept. 2287, 81st Cong., 2d Sess. 14 (1950).

Comment. One commenter objected to the requirement in § 222.37(c)(1) that an applicant under section 3(d)(3)(B)(ii) must show that it is more severely affected by unusual geographical factors than any other LEA in its State. The commenter felt that the proper comparision would be between the applicant and its generally comparable LEAs. The commenter believed that the interpretation of the statutory language contained in § 222.37(c)(1) was too restrictive.

Response. No change has been made. Section 3(d)(3)(B)(ii) requires the

Secretary to compare the current expenditures of an applicant with those of its generally comparable LEAs as part of the process of determining if an increase in funding is necessary. However, the legislative history states that section 3(d)(3)(B)(ii) is to apply to an LEA that "is so unique because of unusual geographical factors that no school districts in the State could reasonably be said to be comparable to it." *See* H. Rept. 2287, 81st Cong., 2d Sess. 14 (1950). The legislative history further states that this provision in the Act is to apply to unusual situations, indicating that a limited number of LEAs are intended to qualify for increased funding under this provision. The Secretary believes that § 222.37 carries out the letter and the spirit of section 3(d)(3)(B)(ii) of the Act.

Comment. One commenter objected to the fact that § 222.37(c)(4) contains a general maintenance of effort requirement that must be satisfied in order to qualify for funding under section 3(d)(3)(B)(ii) of the Act. The commenter asserted that this kind of requirement should not be applied selectively to section 3(d)(3)(B)(ii) applicants, but should be applied to applicants under all sections of the Act or not at all.

Response. No change has been made. Eligibility under section 3(d)(3)(B)(ii) is based, in part, on the applicant's need for additional funds to compensate for the increase in current expenditures caused by unusual geographical factors. Basic payments under section 3 are made without regard to an applicant's need. The Secretary believes that it is appropriate to require maintenance of effort under section 3(d)(3)(B)(ii) to underscore the fact that financial need for these funds must be demonstrated. In addition, the Secretary does not believe that an applicant or its State should be allowed to decrease their financial effort and expect the Federal Government to make up the difference by increasing the applicant's payment under section 3(d)(3)(B)(ii).

Comment. One commenter stated that there is no statutory authority for § 222.37(d) which precludes an applicant in a State with an equalization program from receiving an increased local contribution rate. The commenter asked that at least the regulatory provision be clarified to state that an applicant may not receive an increased local contribution rate under section 3(d)(3)(B)(ii) if the increased funds will be deducted from the applicant's State aid payment.

Reponse. No change has been made. The Secretary does not believe that it is appropriate to provide supplementary payments to enable an applicant to maintain an equivalent level of education to that maintained by its generally comparable LEAs, only to have the State make an offsetting reduction in State aid. The regulations do allow applicants to receive payments under section 3(d)(3)(B)(ii) if their States do not take them into account when distributing State aid.

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Part VI

Department of Education

34 CFR Part 650

National Graduate Fellows Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 650

National Graduate Fellows Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations to implement the National Graduate Fellows Program, established by Title IX, Part C of the Higher Education Act, as amended. These regulations specify how an individual applies for a fellowship under this program, what conditions must be met by a fellow for continued eligibility, and how the amount of a fellowship award will be determined. In addition, these regulations describe the responsibilities of the National Graduate Fellows Program Fellowship Board (the Fellowship Board).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of §650.44(b). Section 650.44(b) will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joel D. West, Executive Director of the National Graduate Fellows Program, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, (Room 3082, ROB–3) 400 Maryland Avenue SW., Washington, D.C. 20202, telephone (202) 245–9274.

SUPPLEMENTARY INFORMATION: The National Graduate Fellows Program is authorized under Title IX, Part C, of the Higher Education Act of 1965, as amended. The statute provides for fellowships to be awarded to students to study at the doctoral level in selected fields of the humanities, arts and social sciences. Many of the responsibilities under this program regarding procedures and criteria for selection of fellows and general policies for the program are vested in the Fellowship Board. The Fellowship Board is composed of individual representatives of both public and private institutions of higher education appointed by the President. The regulations do not establish rules on matters for which the Fellowship Board has responsibility.

On June 3, 1985, the Secretary published in the **Federal Register** (50 FR 23390—23392) a notice of proposed rulemaking for the National Graduate Fellows Program (NGFP). Interested parties were provided 30 days to submit their comments to the Secretary. The following is a summary of the significant comments received and the Secretary's responses to those comments:

Summary of Comments and Responses

Comment. One commenter recommened the inclusion of language in proposed § 650.1 to highlight that this program is aimed at students of "superior ability and exceptional promise."

Response. A change has been made. Section 650.1 has been revised to state that this program makes awards of fellowships to students "of superior ability selected on the basis of demonstrated achievement and exceptional promise." This revision incorporates statutory language that describes and clarifies the purpose of the program.

Comment. Several commenters questioned the inclusion of continuing/ongoing graduate students in the pool of eligible candidates for awards under this program. Section 650.2(a) of the proposed regulations states that at the time of application, an individual is eligible to apply for an award if he or she is "eligible to begin or has begun graduate study." These commenters requested a limitation of eligible applicants to those students who have fewer than 20 semester hours of graduate credit.

Response. No change has been made. The statutory provisions for this program do not explicitly restrict eligibility to prospective or recently-matriculated graduate students. Such restrictions, if made for this program, call for policy judgments that are entrusted and delegated to the Fellowship Board.

Comment. One commenter raised a question on the meaning of the term "institution" in proposed § 650.4. The commenter questioned whether this term included institutions other than "institutions of higher education," such as libraries and research and development centers.

Response. No change has been made. In establishing this program, Congress indicated that only institutions of higher education may participate in this program. The term "institution of higher eduation" is defined in section 1201(a) of the Higher Education Act. Educational institutions, such as libraries and research and development centers may, under appropriate circumstances, meet this statutory definition, and accordingly would not be excluded from participating in this program. The determinations of whether given libraries, or other institutions meet this definition may vary from case to case.

Comment. Three commenters questioned the basis for the $6,000 institutional allowance as set forth in proposed §650.5(b). One commenter recommended a "full cost" allowance for tuition and fees; another questioned the statutory basis for the $6,000 limitation. On this matter, two commenters recommended a "flat amount" of at least $6,000 to all institutions that participate in the program.

Response. No change has been made. The maximum amount of $6,000 for tuition and fees were established by the Secretary after considerable analysis of other comparable fellowship programs and stipend levels. In the Secretary's view, this maximum amount is at a reasonable level to compensate institutions for participating in the program. It also constitutes an appropriate administrative method of extending the program to a maximum number of institutions and, more importantly, enlarging the number of fellowship awards. The Secretary believes that establishment of a $6,000 institutional allowance maximum satisfies the statutory directive to the Secretary to set an "appropriate level." An institution which does not consider this amount adequate is free to choose not to participate in the NGFP.

Comment. One commenter questioned the reference to "members" in § 650.20(c). The commenter indicated that this reference was "ambiguous in its context" and recommended it be changed to "scholars." The rationale for this suggestion was that the review panels should be composed of distinguished representatives of the scholarly community.

Response. A change has been made. The term "individuals" will be used instead of "members" to avoid ambiguity.

Comment. One commenter questioned the provision in § 650.20(d) of the proposed regulations to award fellowships each year in two or more stages. This commenter recommended a single annual award in order "to maximize the leadership leverage of these awards."

Response. No change has been made. The rationale for disbursing fellowship awards in two or more stages is related to cost-efficiencies for the Federal Government.

Comment. One commenter recommended the words "of full-time enrollment" to follow "48 months" (§ 650.13(a)) in order to clarify the point that fellowship status can remain valid up to 48 months of full-time study rather than 48 calendar months from the time of the initial award.

Response. No change has been made. The period of 48 months is an absolute limit.

Comment. Several commenters questioned the inclusion of financial need in the calculation of the fellowship stipend, and the possible reduction of awards based upon an individual's financial need (§ 650.42(a)). There was a concern that such a reduction in the fellowship award might make it less attractive to many of the top graduate students, many of whom have access to other awards and financial assistance.

Response. No change has been made. The statutory scheme mandated by the Congress for this program requires the Secretary to determine appropriate fellowship stipends and to adjust "such stipends as necessary so as not to exceed the fellow's demonstrated level of need according to measurements of need approved by the Secretary." In compliance with this statutory directive, the Secretary has decided that institutions participating in this program should employ the same systems of needs analysis as those used in the campus-based programs to calculate a "fellow's demonstrated level of need." The purpose of this required calculation is to reduce the amount of funds to individuals who clearly do not need a public subsidy for graduate study.

Comment. Virtually all commenters raised serious concerns about a provision in the proposed § 650.42(b) that would have eliminated stipend support to fellows who have an adjusted family income in excess of $32,500. Commenters indicated that such a limitation was unnecessary in light of the needs analysis standards. Several also indicated that the Secretary lacked a statutory basis for this requirement, and that such an "income cutoff" was explicitly rejected by the Congress during deliberations on the FY 1986 Budget Resolution.

Response. A change has been made. Section 650.42(b) has been revised to eliminate the income cutoff originally proposed. The adjusted family income cap of $32,500 for this program was proposed in the context of an earlier administration proposal for student aid eligibility requirements. The Secretary has the statutory authority under this program to establish appropriate financial need criteria. The Secretary agrees that a financial review of individual fellowship recipients will be sufficient to prevent the allocation of Federal funds to those who do not need them, and therefore, has chosen to eliminate the cap.

Other Comments. A significant number of the commenters raised several additional and relatively minor points on the proposed rules. These included technical changes in eligibility requirements (§ 650.2(b)); adjustments to the annual awards to reflect inflationary costs (§ 650.20(d)); and a challenge to the requirement of a certified report to determine satisfactory progress of the fellowship recipient (§ 650.44(a)).

Response. No changes have been made. These assorted comments raised legitimate concerns which are commonly brought to the attention of the Secretary. However, it was determined that none of these minor changes in language or emphasis could be made without violating the statute establishing this program, legislative intent, or acceptable administrative procedures. In general, the provisions are responsive to the needs of institutions offering advanced graduate degrees, and the procedures as established would facilitate the successful implementation of this program.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. This program awards fellowships to students for study at the doctoral level in selected fields. Individuals are not considered to be small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in these regulations in § 650.44(b) will become effective after they have been submitted by the Department of Education and approved by the Office of Management and Budget.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 650

Colleges and universities, Education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parenthesis on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance Number 84.173; National Graduate Fellows Program)

Dated: August 13, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 650 to read as follows:

PART 650—NATIONAL GRADUATE FELLOWS PROGRAM

Subpart A—General

Sec.

650.1 What is the National Graduate Fellows Program?
650.2 Who is eligible to apply for a fellowship under this program?
650.3 What regulations apply to the National Graduate Fellows program?
650.4 What definitions apply to the National Graduate Fellows program?
650.5 What does a fellowship award include?

Subpart B—How Does an Individual Apply for a Fellowship?

650.10 How does an individual apply for a fellowship?

Subpart C—How Are Fellows Selected?

650.20 What are the selection procedures?

Subpart D—What Conditions Must Be Met by Fellows?

650.30 Where may fellows study?
650.31 What is the duration of fellowship?
650.32 What conditions must be met by fellows?
650.33 May fellowship tenure be interrupted?
650.34 May fellows make changes in institution or field of study?
650.35 What records and reports are required from fellows?

Subpart E—What Are the Administrative Responsibilities of the Institution?

650.40 What institutional agreements are needed?
650.41 How are institutional allowances to be administered?

Sec.

650.42 How are stipends to be administered?
650.43 How are disbursement and return of funds made?
650.44 What records and reports are required from institutions?

Authority: Part C of Title IX of the Higher Education Act, as amended by Pub. L. 96-374, 94 Stat. 1367 (20 U.S.C. 1134h-1134k), unless otherwise noted.

Subpart A—General

§ 650.1 What is the National Graduate Fellows Program?

Under the National Graduate Fellows Program the Secretary awards fellowships to students of superior ability selected on the basis of demonstrated achievement and exceptional promise, for study at the doctoral level in selected fields of the arts, humanities, and social sciences.

(20 U.S.C. 1134h)

§ 650.2 Who is eligible to apply for a fellowship under this program?

An individual is eligible to apply for a fellowship under the National Graduate Fellows Program if the individual—

(a) At the time of application, is eligible to begin or has begun graduate study at the doctoral level at an accredited institution of higher education;

(b)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; and

(c) Meets any additional eligibility requirements established by the Fellowship Board.

(20 U.S.C. 1134h-1134k)

§ 650.3 What regulations apply to the National Graduate Fellows Program?

The following regulations apply to this program:

(a) The regulations in this Part 650.

(b) The regulations in EDGAR 34 CFR and Parts 74 and 75, except for the following provisions in EDGAR 34 CFR Part 75, which do not apply:

(1) Subpart C—How to apply for a grant.

(2) Subpart D—How grants are made.

(3) Sections 75.580-75.592 of Subpart E.

(c) For the purposes of the regulations in this part, the terms "grantee" and "recipient", as used in EDGAR, mean an institution of higher education that administers a fellowship award under this part.

(20 U.S.C. 1134h)

§ 650.4 What definitions apply to the National Graduate Fellows Program?

The following definitions apply to terms used in this part:

"Act" means the Higher Education Act of 1956, as amended.

"Fellow" means a fellowship recipient under this part.

"Fellowship" means an award made to a person for graduate study under this part.

"Fellowship Board" means the National Graduate Fellows Program Fellowship Board, composed of individual representatives of both public and private institutions of higher education who are appointed by the President to establish general policies for the program and oversee its operation.

"Institution of higher education" means an institution of higher education as defined in section 1201(a) of the Act.

"Satisfactory progress" means a fellow's progress, in the program for which the fellowship is awarded, that meets or exceeds the institution's norms or standards for doctoral student advancement, as verified by a certified report from the institution to the Secretary.

"Secretary" means Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Stipend" means the amount paid to an individual awarded a fellowship, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(20 U.S.C. 1134h-1134k)

§ 650.5 What does a fellowship award include?

The Secretary awards fellowships consisting of the following:

(a) A stipend paid to the fellow, based upon an annual determination of the fellow's financial need, as set forth in § 650.42.

(b) An annual allowance paid to the institution in which the fellow is enrolled, of (1) $6,000.00, or (2) tuition and other expenses otherwise required by the institution as part of its instructional program, whichever is less.

(20 U.S.C. 1134j)

Subpart B—How Does an Individual Apply for a Fellowship?

§ 650.10 How does an individual apply for a fellowship?

An individual shall apply to the Secretary for a fellowship award in response to an application notice published by the Secretary in the Federal Register.

(20 U.S.C. 1134h)

Subpart C—How Are Fellows Selected?

§ 650.20 What are the selection procedures?

(a) The Fellowship Board establishes criteria for the selection of fellows.

(b) Each year the Fellowship Board selects specific fields of study, and the number of fellows in each field (within the humanities, arts and social sciences), for which fellowships will be awarded.

(c) The Fellowship Board appoints panels of distinguished individuals in each field to evaluate applications.

(d) The Fellowship Board may make awards of the fellowships each year in two or more stages, taking into account at each stage the amount of funds remaining after the level of funding for awards previously made has been established or adjusted.

(20 U.S.C. 1134i)

Subpart D—What Conditions Must Be Met by Fellows?

§ 650.30 Where may fellows study?

A fellow may use the fellowship only for enrollment in a doctoral program at an institution of higher education which is accredited by an accrediting agency or association recognized by the Secretary, which accepts the fellow for graduate study, and which has agreed to comply with the provisions of this part applicable to institutions.

(20 U.S.C. 1134h-1134k)

§ 650.31 What is the duration of a fellowship?

(a) An individual may receive a fellowship under this program for up to 48 months or until receiving the doctoral degree being sought, whichever occurs first.

(b) A fellow who maintains satisfactory progress in his or her course of study may have the fellowship renewed annually, subject to the availability of funds.

(20 U.S.C. 1134h)

§ 650.32 What conditions must be met by fellows?

In order to continue to receive payments under a fellowship, a fellow shall—

(a) Maintain satisfactory progress in the program for which the fellowship was awarded as determined by the institution of higher education;

(b) Devote essentially full time to study or research in the field in which the fellowship was awarded, as determined by the institution of higher education;

(c) Not engage in gainful employment during the period of the fellowship except on a part-time basis, for the institution of higher education at which the fellowship was awarded, in teaching, research, or similar activities approved by the Secretary; and

(d) Begin study under the fellowship in the academic year specified in the fellowship award.

(20 U.S.C. 1134h–1134k)

§ 650.33 May fellowship tenure be interrupted?

(a) A fellow may interrupt periods of study under the fellowship for a period of up to 12 months for the purpose of work, travel or independent study (not part of the fellow's program at the institution of higher education) away from the institution of higher education at which the fellow is enrolled only if—

(1) The work, travel, or independent study is a supportive of the fellow's academic program;

(2) The leave of absence is approved by the institution at which the fellow is enrolled; and

(3) The leave of absence is approved by the Secretary.

(b) The Secretary makes no awards to the fellow or the institution during the leave of absence.

(20 U.S.C. 1134h)

§ 650.34 May fellows make changes in institution or field of study?

After an award is made, a fellow may not make any change in the field of study or institution attended without the prior approval of the Secretary.

(20 U.S.C. 1134k)

§ 650.35 What records and reports are required from fellows?

Each individual who is awarded a fellowship shall keep such records and submit such reports as are required by the Secretary.

(20 U.S.C. 1134k)

Subpart E—What Are the Administrative Responsibilities of the Institution?

§ 650.40 What institutional agreements are needed?

Students enrolled in an otherwise eligible institution of higher education may receive fellowships only if the institution enters into an agreement with the Secretary to comply with the provisions of this part.

(20 U.S.C. 1134h–1134k)

§ 650.41 How are institutional allowances to be administered?

(a) An institution shall treat the institutional allowance paid by the Secretary to the institution on behalf of a fellow as full payment by the fellow, for the period covered by the allowance, for tuition and other expenses otherwise required by the institution as part of its instructional program.

(b) If the fellow is enrolled for less than a full academic year, the Secretary pays the institution a pro rata share of the allowance.

(20 U.S.C. 1134j)

§ 650.42 How are stipends to be administered?

(a) An institution shall calculate the amount of a fellow's financial need annually in the same manner as that in which the institution calculates its students' financial need under the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant programs (34 CFR Parts 674, 675, and 676), except that for this purpose any instructional costs covered by the institutional allowance under § 650.41 may not be treated as costs of attendance.

(b) The institution shall pay the fellow the stipend, in the amount of his financial need or $10,000, whichever is less, from funds advanced to the institution for this purpose by the Secretary. The institution shall return to the Secretary any unused funds advanced for a stipend at the time and in the manner as may be specified by the Secretary.

(c) If a fellow is enrolled for less than a full academic year, the institution shall pay the student a pro rata share of the stipend.

(20 U.S.C. 1134j)

§ 650.43 How are disbursement and return of funds made?

(a) An institution shall disburse a stipend to a fellow in installments. No fewer than two installments per academic year may be made. If the fellowship is vacated or discontinued, the institution shall return any unexpended funds to the Secretary at the time and in such manner required by the Secretary.

(b) A fellow who withdraws from an institution before completion of an academic period for which a stipend installment has been paid to him shall return to the institution a prorated portion of the stipend installment, as determined by the Secretary. The institution shall return the funds to the Secretary at the time and in the manner required by the Secretary.

(c) If a fellow withdraws from an institution before completion of an academic period, the institution shall refund to the Secretary a prorated portion of the institutional allowance it received with respect to that student at the time and in the manner required by the Secretary.

(20 U.S.C. 1134j)

§ 650.44 What records and reports are required from institutions?

(a) An institution shall provide to the Secretary, prior to receipt by such institution of funds for disbursement to a fellow, a certification from an appropriate official at the institution stating whether that fellow is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.

(b) An institution shall keep such records as are necessary to establish the timing and amount of all disbursements of stipends

(20 U.S.C. 1134k)

[FR Doc. 85–19544 Filed 8–15–85; 8:45 am]

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Friday
August 16, 1985

Part VII

Department of Education

Office of Vocational and Adult Education

34 CFR Parts 400, 401, 407, 408, 409, 410, 411, 412, 414, 415, 416, and 417

State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education; Final Regulations

New Projects Under the Vocational Educational Indian and Hawaiian Natives Program for Fiscal Year 1986; Extension of Closing Date for Transmittal of Applications; Notice

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

34 CFR Parts 400, 401, 407, 408, 409, 410, 411, 412, 414, 415, 416, and 417

State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends regulations governing the State Vocational Education Program and the Secretary's Discretionary Programs of Vocational Education. These regulations implement programs authorized by the recently enacted Carl D. Perkins Vocational Education Act. These regulations include information on the States' participation in the program, the types of activities the Secretary supports, and the selection criteria for evaluating applications under the national discretionary programs.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Buzzell, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, Room 620, Reporters Bldg., 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 732-2237.

SUPPLEMENTARY INFORMATION:

Background

The Carl D. Perkins Vocational Education Act ("Act"), which was signed by the President on October 19, 1984, continues Federal assistance for vocational education through fiscal year 1989. While the Act continues both State and national programs of vocational education, it replaces the Vocational Education Act of 1963 and arrays the Federal involvement in vocational education around two broad themes. First, the Act is intended to make vocational education programs accessible to all persons, including handicapped and disadvantaged persons, single parents and homemakers, adults in need of training and retraining, persons participating in programs designed to eliminate sex bias and stereotyping in vocational education, and incarcerated persons. Second, the Act is intended to improve the quality of vocational education program in order to give the Nation's workforce the marketable skills needed to improve productivity and promote economic growth.

The programs authorized by the Act reflect these two themes. The State Vocational Education Program has two major components, the basic State grant and the Special Programs authorized by Titles II and III of the Act, respectively. The basic State grant comprises the Vocational Education Opportunities Program, which represents fifty-seven percent of the funds available for programs under the basic State grant, and the Vocational Education Improvement, Innovation, and Expansion Program, which represents forty-three percent. Under the Vocational Education Opportunities Program the States must use funds for vocational education projects for handicapped individuals, disadvantaged individuals, adults in need of training and retraining, single parents and homemakers, individuals who participate in projects designed to eliminate sex bias and stereotyping, and criminal offenders who are serving in correctional institutions. Under the Vocational Education Improvement, Innovation, and Expansion Program, the States must use funds to expand, improve, modernize, or develop high quality vocational education programs, and are given a broad variety of program choices to accomplish these purposes.

There are five Special Programs under the State Vocational Education Program, each funded from a separate State allotment:

(1) State Assistance for Vocational Education Support Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education;

(3) Adult Training, Retraining, and Employment Development;

(4) Comprehensive Career Guidance and Counseling; and

(5) Industry-Education Partnership for Training in High-Technology Occupations.

Collectively, these programs reflect a desire to enhance the overall quality of the Nation's vocational education system by providing needed support services; drawing upon community resources, including those of the private sector; promoting the coordination of vocational education programs with complementary training efforts; and improving the effectiveness of consumer and homemaking education.

At the national level, the Act continues these broad themes in the Secretary's Discretionary Programs. Individuals with limited English proficiency will continue to be served under the Bilingual Vocational Programs, as will Indians and now Hawaiian Natives, under the Indian and Hawaiian Natives Program. In addition to continuing the National Center for Research in Vocational Education, and authorizing the National Institute of Education to conduct a national assessment of vocational education assisted under the Act, the Act also enhances the authority of the Secretary to carry out a comprehensive program of applied research in vocational education, under the National Vocational Education Research Program. Finally, Title IV of the Act also authorizes four new national programs that are designed to serve the vocational education needs of a number of specific populations and enhance the quality of State programs by making high-technology equipment available to local vocational education projects. These new programs include—

(1) Cooperative Demonstration Program;

(2) State Equipment Pools Program;

(3) Demonstration Centers for the Retraining of Dislocated Workers; and

(4) Model Centers for Vocational Education for Older Individuals.

These final regulations include revised Part 400, containing general provisions applicable to the programs under the Carl D. Perkins Vocational Education Act; a new Part 401, containing the provisions applicable to the State Vocational Education Program; a revised Part 408, containing the provisions applicable to the Bilingual Vocational Instructor Training Program; and a number of new parts applicable to the Secretary's Discretionary Programs of Vocational Education, including: Part 407, the Bilingual Vocational Training Program; Part 409, the Bilingual Vocational Materials, Methods, and Techniques Program; Part 410, the Indian and Hawaiian Natives Program; Part 411, Demonstration Centers for the Training of Dislocated Workers; Part 412, the Cooperative Demonstration Program; Part 414, State Equipment Pools; Part 415, Model Centers for Vocational Education for Older Individuals; Part 416, the Vocational Education Research Program; and Part 417, the National Center for Research in Vocational Education.

Summary of Major Provisions

(a) Changes in Response to Comments

The State Vocational Education Program and the Secretary's

Discretionary Programs of Vocational Education regulations were published as a notice of proposed rulemaking in the Federal Register on January 25, 1985 (50 FR 3626). The Secretary invited comments on whether the regulations should provide more explicit guidance on several issues. Summarized below are the comments received on those issues and the Secretary's responses. Appendix A to these regulations contains a summary of all the comments received and the Secretary's responses to those comments. Appendix B contains a summary of questions and answers on the notice of proposed rulemaking.

(1) Section 400.4(b)—Definitions.

(i) "*Economically depressed area.*" The proposed rule asked if the Secretary should prescribe additional criteria for designating areas as economically depressed. In response, commenters recommended that the Secretary prescribe additional criteria such as a heavy concentration of Chapter 1 students or a heavy concentration of students receiving free and reduced-price lunches.

Rather than possibly restricting the States' decisionmaking authority by prescribing additional criteria, the Secretary will provide States the latitude to develop additional criteria within the framework prescribed by section 521(13) of the Act. States must include the criteria they intend to use to identify economically depressed areas in the State plan. The Secretary will review the criteria along with other provisions of the plan.

(ii) "*Economically disadvantaged family or individual.*" Comments were requested on the proposed definition of economically disadvantaged family or individual. Commenters responded by suggesting that the standards be revised so that they reflect a person's eligibility for certain benefits rather than receipt of those benefits. One commenter recommended deleting several of the standards because of the lack of available data.

No change has been made in the final regulations. The criterion involving the Pell Grant continues to refer to a person's receipt of a Pell Grant or a comparable State program of need-based financial assistance because of the possible complexity of the eligibility determination. The other criteria, however, refer to a person's eligibility for benefits. Regarding the second comment, the definition permits States to choose from among the five standards. The lack of available data is one of the considerations a State may weigh in deciding which standards it will use to determine economic disadvantage.

Another commenter inquired as to the statutory authority for the definition of "economically disadvantaged family or individual" in § 400.4, pointing out that section 521(20) of the Act requires the Secretary to determine such families or individuals on the basis of low-income "according to the latest available data from the Department of Commerce." The commenter noted that the proposed regulatory definition permitted a State to select one or more of the standards of low income, prescribed by the Secretary, to apply for the purposes of its State program. However, not all of these standards are based on Department of Commerce data.

No change has been made in the final regulations. The Secretary believes the regulatory definition is consistent with the intent of Congress in enacting the Carl D. Perkins Act. The definition of economically disadvantaged family or individual in the Carl D. Perkins Act is substantially similar to the definition of "low income family or individual" in the Vocational Education Act (VEA) of 1963. Under the VEA, the term was used in connection with the identification of areas with large concentrations of such families or individuals (not the identification of families or individuals themselves) for the purpose of fund distribution. The Department's well-established administrative practice under this VEA definition of low income family or individual was to permit the use of substitute data, such as Aid to Families with Dependent Children data and data on school lunch program recipients, where Department of Commerce data either did not exist or for some other reason could not be meaningfully applied. Thus, the regulatory definition of economically disadvantaged family or individual under the Carl D. Perkins Act continues this history of administrative flexibility.

The statutory term "economically disadvantaged family or individual" has its principle application in the statutory allocation formulas for basic State grant funds reserved for handicapped individuals and disadvantaged individuals. Under section 203 of the Carl D. Perkins Act those funds are allotted among eligible recipients partly on the basis of actual enrollments of economically disadvantaged individuals. The use of economically disadvantaged enrollments to allocate funds reserved for handicapped and disadvantaged individuals was a feature of the Senate bill that was adopted in conference. With respect to the intended meaning of the term economically disadvantaged family or individual for this purpose, the Senate Report acknowledged the need for administrative flexibility and sanctioned the State practice of using existing student counts, such as eligibility for free or reduced-price school lunches or Pell grant recipients (Senate Report No. 98–507, 98th Cong. 2nd Sess. p. 16). Thus, the regulatory definition is consistent with this important aspect of the legislative history of the Carl D. Perkins Act.

Finally there is the question of administrative feasibility. While it would be possible for the Secretary to establish inflexible qualifying income levels that are based on Department of Commerce data for families and students at the secondary and postsecondary levels, every participating local educational agency or postsecondary educational institution would have to canvas their enrollments every year to identify students at or below the prescribed income level for the purpose of fund allocation. Clearly, this would be a substantial administrative burden upon eligible recipients, one that might discourage their participation in the program, and an intrusive practice with respect to intended program beneficiaries. There is no legislative history which suggests Congress intended to impose such burdens on eligible recipients, students, or their families. Moreover, these potential difficulties, as well as the risk of Federal intrusiveness, are eliminated by permitting the States and eligible recipients to utilize, on a uniform basis, the income data that is already available to them.

(2) Section 401.19—State Plans.

The Secretary requested comments on the contents of the State plans. Commenters responded as follows:

(i) *State plan—assurances.* One commenter asked why maintenance of effort was included in § 401.19(a)(1) and (b)(8).

The regulations have not been changed. Maintenance of effort is included in these subsections in order to highlight this requirement and to clarify that the Secretary may require States to substantiate their compliance with this requirement.

One commenter suggested that the regulations clarify that State-operated schools or institutions should be counted as part of the 80 percent local share.

In response to this comment, § 401.19(a)(4) has been changed to clarify that State-operated schools and

institutions are counted as part of the 80 percent local share.

Several commenters recommended that § 401.19(a)(10) clarify whether 20 percent of the eligible recipients or 20 percent of the programs must be evaluated each program year. Additionally, some commenters wanted to know it all programs must be evaluated during the five-year period, or if some programs could be evaluated twice in order to meet the 20 percent requirement. Other commenters recommended that the regulations clarify that the evaluation requirement applies only to project under the Act.

In response to comments, § 401.19(a)(10) now clarifies that each program year a State will evaluate all of the projects, services, and activities supported under Part 401 of at least 20 percent of the eligible recipients receiving funds under the Act so that by the end of a five-year period, every local program which has received Federal funds will have been evaluated.

Several commenters stated that § 401.19(a)(18) of the proposed rules appeared to set limits on the use of basic State grant funds reserved for vocational education services and activities for handicapped individuals and disadvantaged individuals, whereas section 204(a) of the Act seems broader, appearing to establish conditions that must be in place to receive those funds.

Although § 401.19(a)(18) was not intended to set limits on the use of such funds, a change has been made in the final regulations to clarify the Secretary's interpretation of the statute.

Both the regulations and the statute require the State to include certain assurances in the State plan prior to participating in programs under the State Vocational Education Program; in the sense, both the regulations and the statute establish preconditions to State participation. Section 204(a), however, requires the State board to make these assurances pertaining to the criteria applicable to the services and activities provided to handicapped individuals and disadvantaged individuals "with respect to" the basic State grant funds reserved for these populations. The statutory phrase "with respect to" is ambiguous. Broadly speaking, it might be read to mean that the receipt of Federal funds triggers the application of statutory criteria to the recipient's vocational education program. Or it might be read to mean that the recipient will comply with the statutory criteria in using the Federal funds for vocational education services and activities. In light of the available legislative history to section 204(a), the Secretary believes that the latter interpretation—that Congress intended to ensure that the State would comply with certain equal access criteria in using the Federal funds reserved for handicapped individuals and disadvantaged individuals—is the more plausible interpretation. The legislative history of section 204(a) does not indicate that Congress intended to expand the application of those equal access criteria beyond the reach of funds under the Act. However, it is the Secretary's interpretation that while States must use their funds reserved under the Act for handicapped and disadvantaged individuals in ways that are consistent with the mandated criteria, they need not expend those funds to comply with those criteria which are already being satisfied with funds from other sources.

(ii) *State plan—descriptions.* Several commenters noted that both § 401.19(b)(4) of the regulations and section 113(b)(5) of the Act require that eligible recipients located in economically depressed areas receive more of the Federal funds received by the State than eligible recipients not located in economically depressed areas. Commenters were concerned that if this provision is interpreted to mean at least $1.00 more than half of the State's total grant, such an interpretation would be excessively restrictive and would result in disproportionate allocations of funding, perhaps sending large amounts of money to areas with very small student populations. Commenters requested that the Secretary interpret the word "more" to mean that the economically depressed areas should receive proportionately more funding, e.g., on a per pupil or per capita basis.

The regulations have not been changed. Item 218 in the Conference Report (House Report No. 98–1129, 98th Cong. 2d Sess. p. 95) states that the intent of section 113(b)(5) was ". . . that eligible recipients in economically depressed areas [must] annually receive more total funds than the total amount of funding awarded to eligible recipients in areas which are not economically depressed." Section 401.19(b)(4) of the regulations is consistent with both the language and the intent of the statute as explained in the Conference Report.

Several commenters noted that § 401.19(b)(4) of the proposed regulations omitted the phrase "or which have high unemployment" which appears in section 113(b)(5) of the Act. The commenters pointed out that the omission of this phrase could have the effect of changing the in-State distribution requirements.

In response to this comment the regulations have been changed. References to areas of high unemployment have been added to the fund distribution requirement in § 401.19(b)(4) to more closely reflect the language of the statute. States may now identify areas of high unemployment as well as economically depressed areas for the purpose of this requirement. Corresponding changes have been made to §§ 401.19(b)(12) and 401.102.

(3) Section 401.22—Maintenance of Effort.

The Secretary requested comments on whether guidance was needed on the vocational education expenditures which form the basis of the maintenance of effort determination. Several commenters requested that maintenance of effort determinations be based on current expenses only. Another commenter asked for the legislative basis for the interpretation that only State sources are to be considered in maintenance of effort determinations.

The regulations have not been changed. However, section 503 of the Act states that to be eligible to receive funds under the Act, States must maintain their expenditures "for vocational education." The Secretary interprets the Act, consistent with prior practice under the Vocational Education Act, to include both current and capital expenditures for vocational education, as defined in section 521(31) of the Act and § 400.4(b) of the regulations. States may include vocational education construction costs, if they desire.

In regard to the second comment, the regulations are consistent with the language of the Act, which refers to the fiscal effort or expenditures "of each State." In addition, unlike the Vocational Education Act, the Carl D. Perkins Act does not require the maintenance of fiscal effort at the local level. It is reasonable to believe, therefore, that Congress did not believe that local expenditures should be included in State level maintenance of effort computations.

(4) Section 401.31(a)—Criteria for Reallotment of Funds.

In response to the request for comments, several commenters asked that the regulations provide more guidance with respect to the criteria the Secretary will use in realloting funds.

The Secretary rarely has occasion to reallot funds and therefore feels that the criteria in § 401.31(a)(1) are sufficient. In the future the Secretary may determine that additional guidance is desirable.

(5) Sections 401.52 and 401.53—Programs for Handicapped and Disadvantaged Individuals

The proposed rule asked if further guidance was needed on the services and activities that may be provided with funds under these programs. One commenter pointed out that §§401.52(b) and 401.53(a)(2) stipulate "expenditures for the comparable regular vocational education services and activities" while the statute refers to "expenditures for regular services and activities." The commenter asked why the words "comparable" and "vocational education" were added to the regulations.

The regulations have not been changed. The words "comparable" and "vocational education" were added in §§ 401.52(b) and 401.53(a)(2) of the proposed regulations to reflect the intent of section 201(c)(1) of the Act that the costs of non-mainstreamed programs for handicapped or disadvantaged persons be compared to the same types of programs for non-handicapped or non-disadvantaged individuals in order to obtain valid cost comparisons.

Another commenter expressed the view that §§ 401.52(b) and 401.53(a)(2) will impose burdensome data-gathering requirements on eligible recipients since those regulations require individual cost comparisons between non-mainstreamed programs for handicapped and disadvantaged individuals and comparable regular vocational education programs. The commenter recommended that the regulations permit State-level average cost differentials as opposed to individual program cost comparison by an eligible recipient.

The regulations have not been changed because section 201(c)(1) of the Act clearly requires individual program cost comparisons by an eligible recipient.

Still another commenter was concerned that while § 401.52 of the regulations accurately reflected the wording of section 201(c) of the Act, it might be read to encourage separate programs for handicapped individuals.

Although the regulations have not been changed, the Secretary wishes to emphasize that Item 91 of the Conference Report makes it clear that, even though a distinction is made between "excess" cost requirements for handicapped students in mainstreamed classes and those in separate programs, it is not the intent of Congress to in any way encourage the creation of separate programs for handicapped students. House Report No. 98–1129, 98th Cong. 2d Sess. p. 77.

Another commenter suggested changing the restriction in § 401.53(b)(2) that funds reserved for disadvantaged individuals may be used for acquiring modern machinery and tools, "only" in schools in which at least 75 percent of the students are economically disadvantaged. The commenter wanted "only" changed to "especially."

The regulations have not been changed. Item 81 of the Conference Report specifies that funds may be used to purchase equipment "only in" schools with a 75 percent or more economically disadvantaged enrollment. House Report No. 98–1129, 98th Cong. 2d Sess. p. 75.

(6) Sections 401.59 and 401.60—Use of Funds Under the Vocational Education Improvement, Innovation, and Expansion Program

Comments were requested on the use of funds under Title II, Part B of the Act to "expand, improve, modernize, or develop" high quality programs. Specifically, the Secretary asked if guidance was needed on (a) what activities constitute an expansion, improvement, or modernization, and (b) how many years a program may be "developed." Several commenters recommended that § 401.59 be revised to include a transition period to provide for phasing in the requirements of Title II, Part B of the Act. Their particular concern was that States have time to adjust to the "non-maintenance" requirement for some of the programs authorized under Title II, Part B of the Act.

With respect to a transition period, the regulations have not been changed. The Secretary recognizes the flexibility afforded States during the period of transition under section 3(a)(2) of Pub. L. 98–524 but believes that detailed, and possibly restrictive, regulations are not warranted. The Secretary believes the transition authority is best implemented on a case-by-case basis. Additional guidance regarding the use of the carryover funds and current year funds under section 3(a) of Pub. L. 98–524 is contained in Appendix B to these regulations.

A number of commenters objected to proposed § 401.59(b) which required States to use funds under Title II, Part B to expand, improve, modernize, or develop vocational education services and activities, and prohibited the use of those funds to maintain any existing services and activities. Several commenters felt that some of the services and activities authorized by section 251 of the Act inherently improve, expand, or develop existing vocational education programs. Others thought the proposed regulations prohibited the use of funds for existing programs, including those that are under development.

The regulations have been changed. The legislative history of Title II, Part B makes it clear that Congress intended services and activities funded under this program to represent an improvement, expansion, or development of vocational education programs. However, the Secretary believes that the commenters are correct in pointing out that certain of the services and activities authorized by section 251 do, by their very nature, contribute to the expansion, improvement, or development of vocational education programs. Because these services and activities are inherently related to the improvement of programs, it would be consistent with the intent of Congress to permit States and eligible recipients to maintain them where they already exist, but not the other services and activities authorized by section 251. Accordingly, §§ 401.59 and 401.60 have been rewritten to clarify which authorized activities are inherently related to the improvement of programs (§ 401.60 (b) and (c)) and those which are not (§ 401.60(a)). States and eligible recipients may use funds under Title II, Part B to continue their existing services and activities which fall into the former category, but not services and activities in the latter category. States and eligible recipients may use funds under this program to support only those particular aspects of their services and activities in the latter category (§ 401.60(a)) which represent an innovation, expansion, improvement, modernization, or development.

(7) Section 401.90—State Administrative Costs

The proposed rule requested comments on the use of State administrative funds. Many commenters read section 113(b)(4) of the Act to require a State to distribute all of the funds reserved for handicapped and disadvantaged individuals under Title II Part A of the act to eligible recipients. These commenters felt that § 401.90 of the proposed rule permitted the use of some of those funds for State administration and recommended that § 401.90 be changed to reflect the Act.

No change has been made. Although the Act lacks clarity on this issue, the Secretary believes the regulations reflect the intent of Congress. Section 113(b)(4) of the Act must be read in connection with section 102 of the Act, which allocates the funds in the basic State grant among State administration, the Vocational Education Opportunities

Program authorized by Part A of Title II of the Act, and the program improvement, innovation, and expansion activities authorized by Part B of Title II. In general, section 102 allocates 57 percent of the basic grant to Part A, 43 percent to Part B, and up to 7 percent for State administration. In addition, section 202 of the Act reserves all the basic grant funds available for Part A for six specified populations, including handicapped individuals and disadvantaged individuals, in precisely established proportions. To preserve the integrity of these various fund distribution requirements and the carefully wrought balance of interests they represent, the Secretary has interpreted the Act to require that the States reserve up to 7 percent for State administration prior to allotting the 57 percent and 43 percent for Parts A and B, respectively. This interpretation is consistent with the language of section 113(b)(4) because all the funds "available" for handicapped and disadvantaged individuals, after the reservation of funds for State administration, continue to flow to eligible recipients. In addition, the Secretary's interpretation promotes administrative convenience for the States and reflects the necessity for State-level administrative activity in connection with local programs for handicapped and disadvantaged individuals.

(8) Section 401.93—Local Administrative Costs

Comments were requested on the Secretary's interpretation of the provision regarding local administrative costs. One commenter asked for the statutory authority for limiting local administrative costs to "necessary and reasonable" cost.

The regulations have not been changed as the Secretary believes that the "necessary and reasonable" cost principle is implicit in the statute. This provision is consistent with Educational Department General Administrative Regulations (EDGAR, 34 CFR Part 74, Appendix C) on cost principles, and long-term Departmental practice.

(9) Section 401.95 and § 401.96—Distribution Formulas for Funds Reserved for Handicapped Individuals and Disadvantaged Individuals

The Secretary requested comments on the Secretary's interpretations in §§ 401.95 and 401.96. A variety of comments were received. Some commenters supported the interpretation that the allocation formula is based on participating eligible recipients. Other commenters asked why this interpretation was made.

The Secretary interpreted the distribution formulas as being based on "participating eligible recipients" in order to eliminate the unnecessary administrative burden States would face in having to make pupil counts in, and allocate funds to, eligible recipients which did not wish to participate in the programs (assuming the data were available from such disinterested eligible recipients). Also, allocations for disinterested eligible recipients which did wish to participate, thus creating an additional administrative burden on States.

One commenter requested that allocations for handicapped and disadvantaged individuals be based on the most recent data available rather than on counts made in the program year preceding the year in which the allocation is made.

The regulations continue to require that allocations be based on counts made in the year prior to the year for which determinations are made, as required by section 203(a) of the Act.

(10) Section 401.96(b)—Formula for Individuals With Limited English Proficiency

Comments were requested on the Secretary's interpretation of the formula for reserving funds for individuals with limited English proficiency from funds reserved for disadvantaged individuals under the Vocational Education Opportunities Program.

Several commenters responded by expressing the view that § 401.96(b) of the regulations establishes a method for determining a minimum expenditure level for individuals with limited English proficiency which could result in an inappropriate or inequitable minimum expenditure level for this population.

A change has been made. In general, section 203(a)(3) of the Act requires eligible recipients to support vocational education programs for persons with limited English proficiency from their allotments of Title II, Part A funds reserved for disadvantaged individuals in the same proportion as the number of persons with limited English proficiency "served" by the eligible recipient in the preceding year bears "to the population of the State." In an attempt to give the language of the statute a reasonable meaning, in the proposed regulations the Secretary interpreted "served" to mean served in vocational education, and interpreted the reference to the State's population to mean the total population of persons with limited English proficiency served in vocational education by all participating eligible recipients. The Secretary agrees that, as the commenters pointed out, the ratio between the number of persons with limited English proficiency served in vocational education by an eligible recipient and the number of such persons served in vocational education throughout the State is not always an equitable or appropriate means of allocating an eligible recipient's funds reserved for disadvantaged persons, including persons with limited English proficiency. For example, the ratio described in the proposed regulation does not accurately reflect the relative numbers of limited English proficient persons, and otherwise disadvantaged persons, in an eligible recipient who have a need for vocational education. Several of the commenters invited the Secretary to, in effect, rewrite section 203(a)(3) of the Act in order to establish a more equitable means of allocating funds for persons with limited English proficiency. While the Secretary is not authorized to rewrite the statute, the Department has forwarded to Congress a legislative proposal which would amend section 203(a)(3) and establish a more equitable ratio.

In the meantime, the final regulations essentially repeat the language of section 203(a)(3). The Secretary continues to believe that the interpretation reflected in the proposed regulation is a reasonable one, which the States are free to adopt, where equitable and appropriate; however, the States may adopt other reasonable interpretations, that are consistent with the purposes of the Act, as well. It should also be pointed out that the Secretary interprets section 203(a)(3) to establish a minimum funding requirement for persons with limited English proficiency from Title II, Part A funds reserved for disadvantaged individuals. Therefore a State would be permitted to adopt the interpretation provided in the proposed regulation, but spend additional funds for programs for persons with limited English proficiency when equitable and appropriate to do so. In addition, a new State plan requirement has been added, § 401.19(b)(14), which requires States to describe in their State plans how they will implement § 401.96(b).

(11) Section 401.97—State Match for Funds for Handicapped and Disadvantaged Individuals

The proposed rule requested comments on the statutory provision that States provide the non-Federal share of the cost of projects for handicapped individuals and for disadvantaged individuals under the

Vocational Education Opportunities Program equitably from State and local resources. Several commenters felt that States should be allowed to assume 100 percent of the non-Federal cost. Others felt that programs for handicapped and disadvantaged persons would be adversely affected in instances where the State assumed the total burden of meeting the matching requirement.

Although the regulations have not been changed, the Secretary wishes to clarify that the determination of what constitutes an equitable sharing of the matching requirement between the State and local levels is made, in the first instance, by the State. If a State determines that these costs cannot be reasonably provided by an eligible recipient, § 401.97 permits the State to assume 100 percent of the non-Federal costs for that eligible recipient.

(b) Other Changes

(1) Section 401.13(b) has been changed to require States, other than an Insular Area, to "reserve" rather than "expend" at least $60,000 to carry out activities of personnel assigned to eliminate sex discrimination and sex stereotyping under § 401.13(a). This change was made in order to allow States a period of up to 27 months to use the funds under § 401.13(b). This change makes the use of these funds consistent with the use of other funds under the Act.

(2) Section 401.16(b) was changed to require that State council responsibilities be carried out "during each State plan period." This change clarifies that the activities of the State council, listed in § 401.16(b), do not have to be performed each year.

(3) Section 401.112, dealing with State audit responsibilities, was changed to reflect enactment of the Single Audit Act of 1984, Public Law 98–502. That Act establishes audit requirements for State and local governments and applies to fiscal years that begin after December 31, 1984. The Secretary expects to issue regulations in the future to implement the provisions of the Single Audit Act.

(c) Other Provisions

These regulations do not implement all the provisions of the Carl D. Perkins Vocational Education Act. For example, the Act imposes a number of administrative requirements upon the Secretary for which regulations are unnecessary. In addition, the Act directs the Secretary to carry out or support a number of activities, such as the National Assessment of Vocational Education Programs (section 403 of the Act), and the Vocational Education Data System (section 421 of the Act), which the Act describes in some detail. These regulations do not implement either the National Assessment or the Vocational Education Data System. The Secretary is studying the desirability and need for regulations to implement these requirements and may develop regulations for them at a later date.

(d) Implementation of the Act

The Carl D. Perkins Vocational Education Act superseded the Vocational Education Act of 1963 on October 1, 1984. However, House Report No. 98–1129, 98th Cong. 2d Session, p. 101 clarifies that Congress did not intend the provisions of the new Act to be implemented until school year 1985–1986. During the remainder of school year 1984–1985, States must comply with the requirements of the Vocational Education Act of 1963, the regulations in the current 34 CFR Part 400, and their current State plan documents.

The appropriation for the Department for fiscal year 1985, Pub. L. 98–619, was enacted November 8, 1984. Pub. L. 98–619 appropriates funds for the support of vocational education programs during school year 1985–1986, and these funds became available to the States on July 1, 1985, the start of the first program year under the new Act.

Executive Order 12291

These regulations have been reviewed by the Department in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Parts 400 and 401

Adult education, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Private schools, Reporting and recordkeeping requirements, Schools, School construction, Vocational education, Women.

34 CFR Parts 407, 408, and 409

Bilingual education, Reporting and recordkeeping requirements, Vocational education.

34 CFR Part 410

Indian education, Reporting and recordkeeping requirements, Vocational education.

34 CFR Parts 411, 412, 414, and 415

Educational facilities, Reporting and recordkeeping requirements, Vocational education.

34 CFR Parts 416 and 417

Colleges and universities, Educational research, Reporting and recordkeeping requirements, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations:

(Catalog of Federal Domestic Assistance Numbers 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), 84.051 (National Vocational Education Research Program and the National Center for Research in Vocational Education), 84.053 (State Councils for Vocational Education), 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training Program), 84.100 (Bilingual Vocational Materials, Methods, and Techniques Program), 84.101 (Indian and Hawaiian Natives Program). Catalog of Federal Domestic Assistance Numbers have not been assigned for: State Assistance for Vocational Education Support Programs by Community-Based Organizations; Adult Training, Retraining, and Employment Development Program; Comprehensive Career Guidance and Counseling Program; Industry-Education Partnership for Training in High-Technology Occupations Program; Demonstration Centers for Retraining Dislocated Workers; Cooperative Demonstration Program; State Equipment Pools Program; and Model Centers for Vocational Education for Older Individuals)

Dated: August 9, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 400 and 408, and by adding new Parts 401, 407, 409, 410, 411, 412, 414, 415, 416, and 417 as follows:

1. Part 400 is revised to read as follows:

PART 400—VOCATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

Subpart A—General

Sec.

400.1 What are the purposes of the Carl D. Perkins Vocational Education Act?
400.2 What programs are authorized by the Carl D. Perkins Vocational Education Act?
400.3 What regulations apply to the Vocational Education Programs?
400.4 What definitions apply to the Vocational Education Programs?

Authority: Carl D. Perkins Vocational Education Act, 20 U.S.C. 2301 *et seq.*, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 400.1 What are the purposes of the Carl D. Perkins Vocational Education Act?

The purposes of the Carl D. Perkins Vocational Education Act are to—

(a) Assist the States to expand, improve, modernize, and develop quality vocational education programs in order to meet the needs of the Nation's existing and future work force for marketable skills and to improve productivity and promote economic growth;

(b) Assure that individuals who are inadequately served under vocational education programs are assured access to quality vocational education programs, especially—

(1) Individuals who are disadvantaged;

(2) Individuals who are handicapped;

(3) Men and women who are entering nontraditional occupations;

(4) Adults who are in need of training and retraining;

(5) Individuals who are single parents or homemakers;

(6) Individuals with limited English proficiency; and

(7) Individuals who are incarcerated in correctional institutions;

(c) Promote greater cooperation between public agencies and the private sector in preparing individuals for employment, in promoting the quality of vocational education in the States, and in making the vocational system more responsive to the labor market in the States;

(d) Improve the academic foundations of vocational students and to aid in the application of newer technologies (including the use of computers) in terms of employment or occupational goals;

(e) Provide vocational education services to train, retrain, and upgrade employed and unemployed workers in new skills for which there is a demand in that State or employment market;

(f) Assist the most economically depressed areas of a State to raise employment and occupational competencies of its citizens;

(g) Assist the States to utilize a full range of supportive services, special programs, and guidance counseling and placement to achieve the basic purposes of the Act;

(h) Improve the effectiveness of consumer and homemaking education and to reduce the limiting effects of sex-role stereotyping on occupations, job skills, levels of competency, and careers; and

(i) Authorize national programs designed to—

(1) Meet designated vocational education needs; and

(2) Strengthen the vocational education research process.

(Sec. 2; 20 U.S.C. 2301)

§ 400.2 What programs are authorized by the Carl D. Perkins Vocational Education Act?

The Carl D. Perkins Vocational Education Act authorizes—

(a) The State vocational education program which includes—

(1) The Vocational Education Opportunities Program under the basic State grant, as described in 34 CFR 401.51 through 34 CFR 401.58;

(2) The Vocational Education Improvement, Innovation, and Expansion Program under the basic State grant, as described in 34 CFR 401.59 through 34 CFR 401.61; and

(3) Special Programs which include the—

(i) State Assistance for Vocational Education Support Programs by Community-Based Organizations as described in 34 CFR 401.71 and 34 CFR 401.72;

(ii) Consumer and Homemaking Education Program as described in 34 CFR 401.73;

(iii) Adult Training, Retraining, and Employment Development Program as described in 34 CFR 401.75;

(iv) Comprehensive Career Guidance and Counseling Program as described in 34 CFR 401.76; and

(v) Industry-Education Partnership for Training in High-Technology Occupations Program as described in 34 CFR 401.78; and

(b) National Programs which include—

(1) The Bilingual Vocational Training Program as described in 34 CFR Part 407;

(2) The Bilingual Vocational Instructor Training Program as described in 34 CFR 408;

(3) The Bilingual Vocational Materials, Methods, and Techniques Program as described in 34 CFR Part 409;

(4) The Indian and Hawaiian Natives Program as described in 34 CFR 410;

(5) Demonstration Centers for the Retraining of Dislocated Workers as described in 34 CFR Part 411;

(6) The Cooperative Demonstration Program as described in 34 CFR Part 412;

(7) The State Equipment Pools Programs as described in 34 CFR Part 414;

(8) Model Centers for Vocational Education for Older Individuals as described in 34 CFR Part 415;

(9) The National Vocational Education Research Program as described in 34 CFR Part 416; and

(10) The National Center for Research in Vocational Education as described in 34 CFR Part 417.

(20 U.S.C. 2301 *et seq.*)

§ 400.3 What regulations apply to the Vocational Education Programs?

In addition to the regulations contained in this part and the applicable program regulations, the programs under 34 CFR Parts 401, 407 through 412, and 414 through 417 are subject to the following Education Department General Administrative Regulations (EDGAR) in 34 CFR—

(a) Part 74 (Administration of Grants);

(b) Part 75 (Direct Grant Programs), which applies only to Parts 407 through 412 and Parts 414 through 417;

(c) Part 76 (State-Administered Programs), which applies only to Part 401;

(d) Part 77 (Definitions that apply to Department of Regulations);

(e) Part 78 (Education Appeal Board); and

(f) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(20 U.S.C. 2301 *et seq.*)

§ 400.4 What definitions apply to the Vocational Education Programs?

(a) *Definitions in EDGAR.* Unless otherwise provided, the following terms used in this part and 34 CFR Parts 401, 407 through 412, and 414 through 417 are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Budget
Contract
Department
ED
EDGAR
Facilities
Federally recognized Indian tribal government

Fiscal year
GEPA
Grant
Nonprofit
Nonpublic
Private
Project
Secondary school
Secretary
State
State educational agency
Supplies

(b) *Other definitions.* The following definitions also apply to this part and 34 CFR Parts 401, 407 through 412, and 414 through 417:

"Act" means the Carl D. Perkins Vocational Education Act.

"Administration" means activities of a State necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including curriculum development activities, personnel development, technical assistance, or research activities.

"Apprenticeship training program" means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act, which is conducted or sponsored by an employer, a group of employers, or a joint apprencticeship committee representing both employers and a union, and which contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

"Area vocational education school" means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college or community college or university operating under the policies of the State board and which provides vocational education in no less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraphs (3) and (4) of this definition, it admits as regular students both indivduals who have completed high school and individuals who have left high school.

"Career guidance and counseling" means those programs—

(1) Which pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decisionmaking, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities; and

(2) Which assist individuals in making and implementing informed educational and occupational choices.

"Community-based organization" means a private nonprofit organization of demonstrated effectiveness which is representative of communities or siginficant segments of communities and which provides job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973), agencies serving youth, agencies serving the handicapped, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), or an organization of demostrated effectiveness serving nonreservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

(Sec. 4(5) of the Job Training Partnership Act)

"Construction" includes construction of new buildings and acquisition, and expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

"Cooperative education" means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic course and related vocational instruction by alternation of study in school with a job in any occupational field, but the two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

"Criminal offender" means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender.

"Correctional institution" means any—

(1) Prison;

(2) Jail;

(3) Reformatory;

(4) Work farm;

(5) Detention center; or

(6) Halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

"Curriculum materials" means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field which is designed to strengthen the academic foundation and prepare individuals for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

"Disadvantaged" means individuals (other than handicapped individuals) who have economic or academic disadvantages and who require special services and assistance in order to enable them to succeed in vocational educational programs. The term includes individuals who are members of economically disadvantaged families, migrants, individuals who have limited English proficiency and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (where the grade "A" equals 4.0), or fails to attain minimal academic competencies may be considered "academically disadvantaged." The definition does not include individuals with learning disabilities.

(House Report No. 98-1129, 98th Cong., 2d Sess. p. 100 (1984))

"Economically depressed area" means an economically integrated area within any State in which a chronically low level of economic activity or a deteriorating economic base has caused such adverse effects as—

(1) A rate of unemployment which has exceeded by 50 per centum or more the average rate of unemployment in the State, or in the Nation, for each of the three years preceding the year for which the designation is made; or

(2) A large concentration of low-income families, the designation of which is approved by the Secretary as consistent with the purposes of the Act, with these criteria, and with such other criteria as the Secretary may prescribe.

"Economically disadvantaged family or individual" means a family or individual which the State board identifies as low income on the basis of uniform methods that are described in the State plan. A State must use one or more of the following standards as an indicator of low income:

(1) Annual income at or below the official poverty line established by the Director of the Office of Management and Budget.

(2) Eligibility for free or reduced-priced school lunch.

(3) Eligibility for Aid to Families with Dependent Children or other public assistance programs.

(4) Receipt of a Pell Grant or comparable State program of need-based financial assistance.

(5) Eligibility for participation in programs assisted under Title II of the JTPA.

"Eligible recipient" means a local educational agency or a postsecondary educational institution.

"Handicapped", when applied to individuals, means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or persons with specific learning disabilities, who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational education program without special education assistance.

"High technology" means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

"Homemaker" means an individual who—

(1) Is an adult; and

(2) Has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills.

"Institution of higher education" means an institution of higher education as defined in section 1201 of the Higher Education Act of 1965.

"Insular Area" means the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. For the purpose of 34 CFR 401.13, the term also includes Puerto Rico.

"JTPA" means the Job Training Partnership Act (P.L. 97-300).

"Limited English proficiency", when used with reference to individuals, means individuals—

(1)(i) Who were not born in the United States or whose native language is a language other than English;

(ii) Who came from environments where a language other than English is dominant; or

(iii) Who are American Indian and Alaskan Native students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(20 U.S.C. 3223)

"Local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program.

"Postsecondary educational institution" means an institution legally authorized to provide postsecondary education within a State, or any postsecondary educational institution operated by or on behalf of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

"Private vocational training institution" means a business or trade school, or technical institution or other technical or vocational school, in any State, which—

(1) Admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by the institution;

(2) Is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(3) Has been in existance for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this definition; and

(4) Is accredited—

(i) by a nationally recognized accrediting agency or association listed by the Secretary;

(ii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretaray; or

(iii) If the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of the category, which comittee shall prescribe the standards of content, scope, and quality which must be met by those schools and shall also determine whether particular schools meet those standards.

"Program year" means a period beginning on July 1 and ending on the following June 30.

"School facilities" means classrooms and related facilities, including initial equipment, and interests in lands on which the facilities are constructed. The term does not include any facility intended primarily for events for which admission is to be charged to the general public.

"Single parent" means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2) Has a minor child or children for which the parent has either custody or joint custody.

"Small business" means for-profit enterprises employing five hundred or fewer employees.

"State" means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern

Mariana Islands, or the Trust Territory of the Pacific Islands.

"State board" means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education, or for supervision of the administration of vocational education in the State.

"State council" means the State council on vocational education established in accordance with section 112 of the Act.

"Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, in such fields as agriculture, business occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agriculture arts, and trades and industrial occupations, or for additional preparation for a career in those fields, and in other occupations requiring other than a baccalaureate or advanced degree and vocational student organization activities as an integral part of the program. For purposes of this definition, "organized education program" means only—

(1) Instruction, including career guidance and counseling, related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from that training; and

(2) The acquisition, including leasing, maintenance, and repair, of instructional equipment, supplies, and teaching aids. The term does not mean construction, acquisition of initial equipment or buildings, or the acquisition or rental of land.

"Vocational student organizations" means those organizations for individuals enrolled in vocational education programs which engage in activities as an integral part of the instructional program. These organizations may have State and national units which aggregate the work and purposes of instruction in vocational education at the local level.

(Sec. 521; 20 U.S.C. 2471)

2. A new Part 401 is added to read as follows:

PART 401—STATE VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.

401.1 What is the State Vocational Education Program?
401.2 What regulations apply to the State Vocational Education Program?
401.3 What definitions apply to the State Vocational Edcuation Program?

Subpart B—How Does a State Participate in the State Vocational Education Program?

Sec.

401.10 What is the State board?
401.11 What are the principal responsibilites of the State board?
401.12 What are the additional responsibilities of the State board?
401.13 What are the personnel requirements regarding the elimination of sex discrimination and sex sterotyping?
401.14 Must a State establish a State council on vocational education?
401.15 What are the membership requirements of the State council on vocational education?
401.16 What are the responsibilities of the State council on vocational education?
401.17 What are the State plan requirements?
401.18 How is the State plan developed?
401.19 What must the State plan contain?
401.20 What procedures does a State use to submit its State plan?
401.21 When are amendments to State plans required?
401.22 What is the maintenance of fiscal effort requirement under the State Vocational Education Program?

Subpart C—How Does the Secretary Make a Grant to a State?

401.30 How Does the Secretary make allotments under the State Vocational Education Program?
401.31 How does the Secretary make reallotments under the State Vocational Education Program?
401.32 When does the Secretary approve State plans and amendments?

Subpart D—How Does a State Make an Award to an Eligible Recipient?

401.40 How does a State carry out the State Vocational Education Program?
401.41 What are the local application requirements under the State Vocational Education Program?

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic State Grant?

401.50 What are the components of the basic grant?
401.51 What is the Vocational Education Opportuntities Program?
401.52 How may funds under the Vocational Education Opportunities Program be used to serve handicapped individuals?
401.53 How may funds under the Vocational Education Opporunities Program be used to serve disadvantaged individuals?
401.54 How may funds under the Vocational Education Opportunities Program be used to serve adults who are in need of training or retraining?
401.55 How may funds under the Vocational Education Opportunities Program be used to serve individuals who are single parents or homemakers?
401.56 How may funds under the Vocational Education Opportunities Program be used to serve individuals who participate in programs designed to eliminate sex bias and sterotyping in vocational education?

Sec.

401.57 How may funds under the Vocational Education Opportunities Program be used for criminal offenders who are serving in a correctional institution?
401.58 In what additional ways may funds under the Vocational Education Opportunities Program be used?
401.59 What is the Vocational Education Improvement, Innovation, and Expansion Program?
401.60 How may funds under the Vocational Education Improvement, Innovation, and Expansion Program be used?
401.61 How may a State distribute funds under the Vocational Education Improvement, Innovation, and Expansion Program?

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

401.70 What are the Special Programs?
401.71 What activities does the Secretary support under the State Assistance for Vocational Education Support Program by Community-Based Organizations?
401.72 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?
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401.74 What are the purposes of the Adult Training, Retraining, and Employment Development Program?
401.75 What activities does the Secretary support under the Adult Training, Retraining, and Employment Development Program?
401.76 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Program?
401.77 What are the purposes of the Industry-Education Partnership or Training in High-Technology Occupations Program?
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Subpart G—What Conditions Must the State Meet Under the State Vocational Education Program?

401.90 How does a State reserve funds under the basic State grant?
401.91 How does a State reserve funds under the basic State grant for State administration?
401.92 How does a State reserve funds under the Vocational Education Opportunities Program?
401.93 What are the administrative cost requirements under the State Vocational Education Program?

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401.94 What are the cost-sharing requirements under the State Vocational Education Program?
401.95 How does a State allocate funds for handicapped individuals under the Vocational Education Opportunities Program?
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401.97 How does a State match funds for handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?
401.98 How does an eligible recipient use community-based organizations under the Vocational Education Opportunities Program?
401.99 What kinds of joint projects are authorized under the Vocational Education Opportunities Program?
401.100 How does a State distribute funds not reserved for handicapped or disadvantaged individuals under the Vocational Education Opportunities Program?
401.101 What are the "equal access" provisions that apply to handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?
401.102 How must funds be used under the Consumer and Homemaking Education Program?
401.103 How must a State use funds under the Adult Training, Retraining, and Employment Development Program?
401.104 How must a State coordinate programs under the Adult Training, Retraining, and Employment Development Program?
401.105 How must funds be used under the Comprehensive Career Guidance and Counseling Program?

Subpart H—What are the Administrative Responsibilities of a State Under the State Vocational Education Program?

401.110 What are a State's responsibilities regarding the Vocational Education Data System?
401.111 What are a State's responsibilities regarding a State occupational information coordinating committee?
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401.121 How under the Act may an eligible recipient appeal a final action of a State board?

Authority: Carl D. Perkins Vocational Education Act, 20 U.S.C. 2301 *et seq.*, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 401.1 What is the State Vocational Education Program?

(a) Under the State Vocational Education Program, the Secretary makes grants to States, to assist them, local educational agencies, postsecondary educational institutions, and other agencies and institutions to administer the Federally assisted vocational education programs that are authorized by the Act.

(b) The State Vocational Education Program consists of the programs under the basic State grant for vocational education authorized by Title II of the Act and the Special Programs authorized by Title III of the Act.

(20 U.S.C. 2301 *et seq.*)

§ 401.2 What regulations apply to the State Vocational Education Program?

The following regulations apply to the State Vocational Education Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(20 U.S.C. 2301 *et seq.*)

§ 401.3 What definitions apply to the State Vocational Education Program?

The definitions in 34 CFR 400.4 apply to the State Vocational Education Program.

(Sec. 521; 20 U.S.C. 2471)

Subpart B—How Does a State Participate in the State Vocational Education Program?

§ 401.10 What is the State board?

A State that desires to participate in the programs authorized by the Act shall, consistent with State law, designate or establish a State board of vocational education which shall be the sole State agency responsible for the administration or the supervision of the State's vocational education program.

(Sec. 111(a); 20 U.S.C. 2321(a))

§ 401.11 What are the principal responsibilities of the State board?

The principal responsibilities of the State board must include—

(a) The coordination of the development, submission, and implementation of the State plan;

(b) The evaluation of the programs, services, and activities assisted under the Act, as required by § 401.19(a) (8) and (9);

(c) The development, in consultation with the State council on vocational education, and the submission to the Secretary of the State plan;

(d) Consultation with the State council on vocational education and other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs under the Act;

(e) Convening and meeting as a State board, consistent with State law and procedure, when the State board determines it is necessary to meet to carry out its functions under the Act, but not less than four times annually; and

(f) The adoption of those procedures the State board considers necessary to implement State level coordination with the State job training coordinating council in order to encourage cooperation between programs under the Act and programs under the JTPA.

(Sec. 111(a); 20 U.S.C. 2321(a))

§ 401.12 What are the additional responsibilities of the State board?

(a) The State board shall make available to each private industry council (PIC) established within the State under section 102 of the JTPA a current listing of all programs assisted under the Act.

(b)(1) The State board, in consultation with the State council on vocational education established under § 401.14, shall establish at least two technical committees to advise the State council and the State board on the development of model curricula to address State labor market needs. The technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. This inventory must identify the type of level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State.

(2) The State board shall establish procedures for membership, operation, and duration of the technical committees that are consistent with the purposes of the Act. Their membership must be composed of representatives of—

(i) Employees from any relevant industry or occupation for which the committee is established;

(ii) Trade or professional organizations representing any relevant occupations; and

(iii) Organized labor, where appropriate.

(3)(i) A State may use funds reserved under § 401.90(b)(2) for the Vocational Education Improvement, Innovation, and Expansion Program to support the activities of the technical committees it establishes under paragraph (b)(1) of this section.

(ii) For the purpose of § 401.19(a)(4), regarding the requirement that a State distribute at least eighty percent of its total basic State grant allotment to eligible recipients, a State shall consider

the funds used to support the technical committees as part of the State's portion (the portion that may not exceed twenty percent) of the State's allotment.

(c) The State board shall identify as a State imposed requirement any State rule or policy it imposes relating to the administration and operation of programs funded under the Act, including any rule or policy based on the State board's interpretation of any Federal law, regulation, or guideline.

(d) Except for the functions described in § 401.11, the State board may delegate any of its other administrative, operational, or supervisory responsibilities, in whole or in part, to one or more appropriate State agencies.

(Secs. 111(a), (c), (d), (e), 521(1); 20 U.S.C. 2321(a), (c), (d), (e), 2471(1))

§ 401.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State, other than an Insular Area, that desires to participate in the State Vocational Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 401.12(d) to administer vocational education programs within the State, to work full time to assist the State board to fulfill the purposes of the Act by—

(1) Administering the program of vocational education for single parents and homemakers described in § 401.55 and the sex equity program described in § 401.56;

(2) Gathering, analyzing, and disseminating data on the —

(i) Adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women, including the preparation of women for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women; and

(ii) Status of men and women students and employees in the programs in paragraph (a)(2)(i) of this section;

(3)(i) Reviewing vocational educational programs, including career guidance and counseling, for sex stereotyping and sex bias, with particular attention to practices which tend to inhibit the entry of women in high technology occupations; and

(ii) Submitting recommendations for inclusion in the State plan for programs and policies to overcome sex bias and sex stereotyping in the programs in paragraph (a)(3)(i) of this section;

(4) Submitting to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping;

(5) Reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of that Act;

(6) Developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women, including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields;

(7) Providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State, on expanding vocational opportunities for women; and

(8) Assisting administrators, instructors, and counselors in implementing programs and activities to increase access for women, including displaced homemakers and single heads of households, to vocational education and to increase male and female students' enrollment in nontraditional programs.

(b) A State, other than an Insular Area, shall, in accordance with § 401.91(b), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030)

(Sec. 111(b); 20 U.S.C. 2321(b))

§ 401.14 Must a State establish a State council on vocational education?

A State, other than an Insular Area, that desires to participate in the State Vocational Education Program shall establish a State council on vocational education, which must be appointed by the Governor or, in the case of States in which the members of the State board of education are elected, including election by the State legislature, must be appointed by the State board of education.

(Sec. 112(a); 20 U.S.C. 2322(a); House Report No. 98-1129, 98th Cong. 2d Sess. p. 89 (1984))

§ 401.15 What are the membership requirements of the State council on vocational education?

(a) Each State council must be composed of thirteen individuals, and must be broadly representative of citizens and groups within the State having an interest in vocational education.

(b) Each State council must consist of—

(1) Seven individuals who are representative of the private sector in the State and who must constitute a majority of the membership—

(i) Five of whom must be representative of business, industry, and agriculture including—

(A) One member who is representative of small business concerns; and

(B) One member who is a private sector member of the State job training coordinating council established pursuant to section 122 of the JTPA; and

(ii) Two of whom must be representatives of labor organizations; and

(2) Six individuals, one of whom must be representative of special education, who are representative of—

(i) Secondary and postsecondary vocational institutions (equitably distributed among those institutions);

(ii) Career guidance and counseling organizations within the State; and

(iii) Individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations, including women, disadvantaged individuals, handicapped individuals, individuals with limited English proficiency, and minorities.

(c) In selecting individuals to serve on the State council on vocational education, the State shall give due consideration to the appointment of individuals who serve on a private industry council under the JTPA, or on State councils established under other related Federal programs.

(d) Each State shall certify to the Secretary the establishment and membership of the State council at least 90 days prior to the beginning of each program period described in § 401.17.

(Sec. 112 (a), (b); 20 U.S.C. 2322 (a), (b))

§401.16 What are the responsibilities of the State council on vocational education?

(a)(1) The State council on vocational education shall meet as soon as practical after the Secretary accepts its certification and shall select from among its membership a chairperson who must be a representative of the private sector.

(2) The State council on vocational education shall adopt rules that govern the time, place, and manner of meeting, as well as council operating procedures and staffing. The rules must provide for at least one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(b) Each State council on vocational education, during each State plan period described in § 401.17 unless otherwise indicated, shall—

(1) Meet with the State board or its representatives to advise on the development of the State plan, or any amendments to the State plan, while the State plan or amendment is being developed;

(2) Advise the State board and make reports to the Governor, the business community, and general public of the State concerning—

(i) Policies the State should pursue to strengthen vocational education, with particular attention to programs for the handicapped; and

(ii) Initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) Analyze and report on the distribution of all vocational education funds in the State and on the availability of vocational education activities and services within the State;

(4) Consult with the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) Submit recommendations to the State board on the conduct of vocational education programs conducted in the State which emphasize the use of business concerns and labor organizations;

(6) Assess and report on the distribution of financial assistance under the Act, particularly the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) Recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) Report to the State board on the extent to which the individuals described in § 401.51 are provided with equal access to quality vocational education programs; and

(9)(i) At least once every two years—

(A) Evaluate the vocational education program delivery systems assisted under the Act and the JTPA in terms of their adequacy and effectiveness in achieving their respective purposes; and

(B) Make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the JTPA; and

(ii) Advise, in writing, the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(c)(1) Each State council on vocational education is authorized to—

(i) Obtain the services of whatever professional, technical, and clerical personnel are necessary to enable it to carry out its functions under the Act; and

(ii) Contract for whatever services are necessary to enable it to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(2) The expenditure of funds awarded to a State council on vocational education by the Secretary must be solely determined by that State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual. Each State council on vocational education shall designate an appropriate State agency, or other public agency eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030)

(Sec. 112(c)-(f); 20 U.S.C. 2322(c)-(f))

§ 401.17 What are the State plan requirements?

(a) A State that desires to participate in the State Vocational Education Program shall submit to the Secretary a State plan for a three program year period in the case of the initial plan and a two program year period thereafter, together with any annual amendments the State board determines to be necessary.

(b) Each State shall carry out its programs under the State Vocational Education Program on the basis of program years which coincide with program years under section 104(a) of the JTPA.

(c) The provisions of 34 CFR 76.103 do not apply to the State Vocational Education Program.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0029)

(Sec. 113(a)(1); 20 U.S.C. 2323(a)(1))

§ 401.18 How is the State plan developed?

(a) In formulating the State plan, and any amendments to the State plan, the State board shall meet with and utilize the State council on vocational education established under § 401.14.

(b) After providing appropriate and sufficient notice to the public, the State board shall conduct at least two public hearings in the State for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan.

(c) In developing the State plan, the State board shall—

(1) Assess the current and projected occupational needs and the current and projected demand for general occupational skills within the State;

(2) Examine the needs of students, including adults, in order to determine how best to improve student skill levels in light of the State's occupational and skill requirements;

(3) Assess the special needs of groups of individuals described in § 401.51 for access to vocational education and vocational services in terms of labor market needs;

(4) Assess the quality of vocational education in terms of—

(i) The pertinence of programs to the workplace and to new and emerging technologies;

(ii) The responsiveness of programs to the current and projected occupational needs in the State;

(iii) The capacity of programs to facilitate entry into, and participation in, vocational eduction, and to ease the school-to-work and secondary-to-postsecondary transitions;

(iv) The technological and educational quality of vocational curricula, equipment, and instructional materials to enable vocational students and instructors to meet the challenges of increased technological demands of the workplace; and

(v) The capacity of vocational education programs to meet the needs for general occupational skills and the improvement of academic foundations in order to address the changing content of jobs;

(5) Determine the capacity of local educational agencies, with respect to secondary education, and postsecondary educational institutions, to deliver the vocational education services necessary to meet the needs identified through the assessments required by paragraphs (c) (1) through (4) of this section; and

(6) Determine, for each program year, how the services and activities supported under the Act may be expected to assist the State in meeting the needs identified through the assessments required by paragraphs (c) (1) through (4) of this section.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0029)

(Sec. 113(a)(3); 20 U.S.C. 2323(a)(3))

§ 401.19 What must the State plan contain?

(a) *Assurances.* To participate in the programs authorized under the State Vocational Education Program, the State

shall include the following assurances in its State plan:

(1) That the State board will comply with the requirements of Titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirement in § 401.22).

(Sec. 113(b)(1); 20 U.S.C. 2323(b)(1))

(2) That the State will comply with the distribution of assistance requirements contained in §§ 401.95 and 401.96.

(Sec. 113(b)(1)(B); 20 U.S.C. 2323(b)(1)(B))

(3) That, to the extent consistent with the number and location of handicapped and disadvantaged individuals who are enrolled in private elementary and secondary schools in the State, the State will provide for the participation of these individuals in the Vocational Education Opportunities Program.

(Sec. 113(b)(a)(C); 20 U.S.C. 2323(b)(1)(C))

(4) That the State will distribute at least eighty percent of its total basic State grant allotment to eligible recipients or combinations of eligible recipients. Funds distributed to State-operated schools or institutions are counted as if they were distributed to eligible recipients.

(Sec. 113(b)(4); 20 U.S.C. 2323(b)(4); House Report No. 98-1129, 98th Cong. 2d Sess. p. 96 (1984))

(5) That the State will distribute all of the State basic grant funds reserved for handicapped and disadvantaged individuals under § 401.92 (a) and (b) to eligible recipients or combinations of eligible recipients, in accordance with §§ 401.95 and 401.96.

(Sec. 113(b)(4); 20 U.S.C. 2323(b)(4))

(6) That is using funds allotted for single parents and homemakers under § 401.92(d)—

(i) The State will emphasize assisting individuals with the greatest financial need; and

(ii) That in serving homemakers, the State will give special consideration to homemakers who, because of divorce, separation, or the death or disability of a spouse, must prepare for paid employment.

(Sec. 113(b)(7); 20 U.S.C. 2323(b)(7))

(7) That the State will provide relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex.

(Sec. 113(b)(8); 20 U.S.C. 2323(b)(8))

(8) That the State will develop measures for evaluating the effectiveness of programs assisted under the Act in meeting the needs identified in the State plan, including measurements of such factors as—

(i) The occupations to be trained for, which must reflect a realistic assessment of the labor market needs of the State;

(ii) The levels of skills, to be achieved in particular occupations, which must reflect the hiring needs of employers; and

(iii) The basic employment competencies to be used in performance outcomes, which must reflect the hiring needs of employers.

(Sec. 113(b)(9)(A); 20 U.S.C. 2323(b)(9)(A))

(9) That the State will establish appropriate measures for evaluating the effectiveness of programs for the handicapped under the Act, as a component of the measures developed under paragraph (a)(8) of this section.

(Sec. 113(b)(9)(B); 20 U.S.C. 2323(b)(9)(B))

(10) That each program year the State will evaluate all of the projects, services, and activities, supported under this part, of at least twenty percent of the participating eligible recipients, so that by the end of a five year period every local program which has received Federal funds will have been evaluated.

(Sec. 113(b)(9)(C); 20 U.S.C. 2323(b)(9)(C); House Report No. 98-1129, 98th Cong. 2d Sess. p. 97 (1984))

(11) That the State will fund programs of personnel development and curriculum development that further the goals identified in the State plan.

(Sec. 113(b)(11); 20 U.S.C. 2323(b)(11))

(12) That the vocational education needs of those identifiable segments of the population in the State that have the highest rates of unemployment have been thoroughly assessed, and that those needs are reflected in, and addressed by, the State plan.

(Sec. 113(b)(12); 20 U.S.C. 2323(b)(12))

(13) That the State board will cooperate with the State council on vocational education in carrying out the State council's duties under this part.

(Sec. 113(b)(13); 20 U.S.C. 2323(b)(13))

(14) That none of the funds expended under the Act will be used to acquire equipment (including computer software) in any instance in which its acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity, or its employees, or any affiliate of such an organization.

(Sec. 113(b)(14); 20 U.S.C. 2323(b)(14))

(15) That for each program year, expenditures for career guidance and counseling from allotments for the basic State grant authorized by Title II of the Act, and the Comprehensive Career Guidance and Counseling Program under the Special Programs authorized by Title III, Part D of the Act, will not be less than the expenditures for guidance and counseling programs in the State that were assisted under section 134(a) of the Vocational Education Act of 1963 for fiscal year 1984.

(Sec. 113(b)(15); 20 U.S.C. 2323(b)(15))

(16) That Federal funds made available under the Act will be used to supplement, and to the extent practicable, increase the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan, and in no case to supplant those State or local funds.

(Sec. 113(b)(16); 20 U.S.C. 2323(b)(16))

(17) That the State will provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, Federal funds paid to the State, including Federal funds paid by the State to eligible recipients under the Act.

(Sec. 113(b)(17); 20 U.S.C. 2323(b)(17))

(18) That the State, in using basic State grant funds reserved for vocational education services and activities for handicapped individuals and disadvantaged individuals under § 401.92, will—

(i) Provide equal access to those individuals—

(A) In recruitment, enrollment, and placement activities; and

(B) To the full range of vocational programs available to nonhandicapped and nondisadvantaged individuals, including occupationally specific courses of study, cooperative education, and apprenticeship programs; and

(ii) Provide vocational education programs and activities for handicapped individuals—

(A) In the least restrictive environment in accordance with section 612(5)(B) of the Education of the Handicapped Act;

(B) Which are included, whenever appropriate, as a component of the individualized education program required under section 612(4) and section 614(a)(5) of that Act; and

(C) Which are planned through the coordination of appropriate representatives of vocational education and special education.

(Sec. 204(a); 20 U.S.C. 2334(a))

(19) That programs under the Adult Training, Retraining and Employment

Development Program authorized by Title III, Part C of the Act—

(i) Are designed with the active participation of the State council established under § 401.14;

(ii) Make maximum effective use of existing institutions, are planned to avoid duplication of programs or institutional capabilities, and, to the fullest extent practicable, are designed to strengthen institutional capacity to meet the education and training needs addressed by the Adult Training, Retraining, and Employment Development Program;

(iii) Involve close cooperation with and participation by public and private sector employers and public and private agencies working with problems of employment and training and economic development; and

(iv) Involve coordination with programs under the Rehabilitation Act of 1973 and the Education of the Handicapped Act, where appropriate.

(Sec. 322(b)(2); 20 U.S.C. 2372(b)(2))

(20) That funds received under the Industry-Education Partnership for Training in High-Technology Occupations Program authorized by Title III, Part E of the Act—

(i) Will be used solely for vocational education programs designed to train skilled workers and technicians in high-technology occupations, including programs providing related instruction to apprentices, and projects to train skilled workers needed to produce, install, operate, and maintain high technology equipment, systems, and processes; and

(ii) Will be used, to the maximum extent practicable, in coordination with the JTPA to avoid duplication of effort, and to ensure maximum effective utilization of funds under the Act and the JTPA.

(Sec. 342(b) (1), (2); 20 U.S.C. 2392(b) (1), (2))

(21) That not less than fifty percent of the aggregate costs of projects assisted under the Industry-Education Partnership for Training in High-Technology Occupations Programs authorized by Title III, Part E of the Act will be provided from non-Federal sources, except as provided in § 401.80(a)(3), and that not less than fifty percent of the non-Federal share of the aggregate costs in the State will be provided by participating business and industrial firms.

(Sec. 342(b)(3); 20 U.S.C. 2392(b)(3))

(22) That projects assisted under the Industry-Education Partnership for Training in High-Technology Occupations Program authorized by Title III, Part E of the Act will be—

(i) Coordinated with similar programs assisted under the basic State grant program and, to the maximum extent practicable (consistent with the purposes of programs assisted under the basic State grant program), supportive services will be organized to serve both programs; and

(ii) Developed with the active participation of the State council established under § 401.14.

(Sec. 342(b) (4), (5); 20 U.S.C. 2392(b) (4), (5))

(b) *Descriptions.* To participate in the programs authorized under the State Vocational Education Program, the State shall include the following descriptions in its State plan:

(1) The manner in which the State will comply with the requirements for programs for the handicapped and for the disadvantaged described in paragraph (a)(18) of this section and § 401.101.

(Sec. 113(b)(1)(A); 20 U.S.C. 2323(b)(1)(A))

(2) The planned uses of Federal funds available for vocational education for each program year for which the State plan is submitted and how the State carried out the requirements of § 401.18(c).

(Sec. 113(b)(2); 20 U.S.C. 2323(b)(2))

(3) The progress the State has made in achieving the goals set forth in each preceding State plan under the Act.

(Sec. 113(b)(3); 20 U.S.C. 2323(b)(3))

(4) The criteria the State board will use in approving applications of eligible recipients and allocating funds under the State Vocational Education Program to eligible recipients. These criteria must ensure that the State allocates more funds under the State Vocational Education Program to eligible recipients in units of local government that are in economically depressed areas (including both urban and rural units) or which have high unemployment, as determined by the State, than it allocates to eligible recipients that are not in economically depressed areas or areas which have high unemployment.

(Sec. 113(b)(5); 20 U.S.C. 2323(b)(5))

(5) Whatever methods of administration are necessary for the proper and efficient administration of the Act.

(Sec. 113(b)(6); 20 U.S.C. 2323(b)(6))

(6) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act, Chapter 1 of the Education Consolidation and Improvement Act, the Education of the Handicapped Act, and the Rehabilitation Act of 1973, and with apprenticeship training programs.

(Sec. 113(b)(10); 20 U.S.C. 2323(b)(10))

(7) Any delegation of functions under § 401.12(d).

(Sec. 111(a)(2); 20 U.S.C. 2321(a)(2))

(8) If the Secretary requires, the manner in which the State board will comply with the requirements of Titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirement in § 401.22).

(Sec. 113(b)(1); 20 U.S.C. 2323(b)(1))

(9) The uniform methods the State board will use to identify economically disadvantaged families and individuals.

(Sec. 521(20); 20 U.S.C. 2471(20))

(10) The appropriate criteria for determining which eligible recipients are exempt from the local application requirements under § 401.41.

(Sec. 115(c)(2); 20 U.S.C. 2325(c)(2))

(11) The methods and procedures the State will use for coordinating vocational education programs, services, and activities under the Adult Training, Retraining, and Employment Development Program authorized by Title III, Part C of the Act with programs of assistance for dislocated workers funded under Title III of the JTPA.

(Sec. 323(a); 20 U.S.C. 2373(a))

(12) The criteria the State uses to designate an economically depressed area or an area with high unemployment.

(Sec. 521(13); 20 U.S.C. 2471(13))

(13) A summary of the recommendations made at the public hearings on the State plan and the State board's response.

(Sec. 113(a)(2)(B); 20 U.S.C. 2323(a)(2)(B))

(14) The manner in which the State will comply with § 401.96(b).

(Approved by the Office of Management and Budget under OMB Control No. 1830-0029)

(Sec. 203(a)(3); 20 U.S.C. 2333(a)(3))

§ 401.20 What procedures does a State use to submit its State plan?

(a)(1) The State board shall submit its State plan for review and comment to the State legislature and the State job training coordinating council under section 122 of the JTPA not less than sixty days before the State plan is submitted to the Secretary.

(2) If the matters raised by the comments of the State legislature and the State job training coordinating council are not addressed in the State

plan, the State board shall submit those comments to the Secretary with the State plan.

(3) If the State legislature is not in session during the sixty-day period described in paragraph (a)(1) of this section, the State board shall submit the plan to the State legislature for review and comment at its next session, and forward any comments to the Secretary.

(b)(1) The State board shall submit its State plan for review and comment to the State council on vocational education not less than sixty days before the State plan is submitted to the Secretary.

(2) If the State council on vocational education finds that the final State plan is objectionable for any reason, including that it does not meet the labor market needs of the State, the State council shall file its objections with the State board.

(3) The State board shall respond to any objections of the State council in submitting the State plan to the Secretary.

(c)(1) The State board shall submit its State plan to the Secretary by the May 1 preceding the first program year for which the plan will be in effect.

(2) The State plan shall be considered to be the general application required by section 435 of the General Education Provisions Act.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0029)

(Sec. 114; 20 U.S.C. 2324)

§ 401.21 When are amendments to State plans required?

The State board, in consultation with the State council, shall submit one or more amendments to the State plan to the Secretary when required by 34 CFR 76.140 or when changes in program conditions, labor market conditions, funding, or other factors require substantial amendment of an approved State plan. All amendments must be subject to review by the State job training coordinating council and the State council on vocational education.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0029)

(Sec. 113(c)(1); 20 U.S.C. 2323(c)(1))

§ 401.22 What is the maintenance of fiscal effort requirement under the State Vocational Education Program?

(a) The Secretary may not make a payment under the Act to a State for any fiscal year unless the Secretary determines that the fiscal effort per student, or the aggregate expenditures of that State, from State sources, for vocational education for the fiscal year (or program year) preceding the fiscal year (or program year) for which the determination is made, at least equaled its effort or expenditures for vocational education for the second preceding fiscal year (or program year).

(b)(1) If the Secretary makes a determination that a waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the State to meet the requirements of paragraph (a) of this section, the Secretary may waive those requirements for one year only. Examples of exceptional or uncontrollable circumstances affecting the financial ability of the State are a national disaster or an unforeseen and precipitous decline in financial resources.

(2) No level of expenditures permitted under a waiver may be used as a basis for computing the fiscal effort required under paragraph (a) of this section for subsequent years. Instead, for subsequent years, fiscal effort must be computed on the basis of the level of expenditures that would have been required had a waiver not been granted.

(Sec. 503; 20 U.S.C. 2463)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 401.30 How does the Secretary make allotments under the State Vocational Education Program?

(a)(1) From funds appropriated under section 3(a) of the Act for the basic State grant and section 3(b) of the Act for the programs that compose the Special Programs, the Secretary allots funds each fiscal year according to the provisions of section 101 of the Act.

(2) Upon approval of its State plan and any annual amendments, the Secretary makes one or more grant awards from those allotments to the State.

(b)(1) From funds appropriated under section 3(c) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1)(A) of the Act.

(2) Upon approval of the State plan and submission of an annual budget covering the proposed expenditures of the State council on vocational education for the following program year, the Secretary makes an award to the State council.

(Sec. 501(b); 20 U.S.C. 2461(b))

§ 401.31 How does the Secretary make reallotments under the State Vocational Education Program?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 401.30(a) will not be required for any fiscal year for carrying out the program for which the allotment was made, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to utilize them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Sec. 101(b); 20 U.S.C. 2311(b))

§ 401.32 When does the Secretary approve State plans and amendments?

(a)(1) The Secretary approves a State plan, or an amendment to a State plan, unless the amendments propose changes that are inconsistent with the requirements and purposes of the Act, within sixty days of its receipt if it complies with the requirements of the Act and applicable regulations.

(2) Before the Secretary finally disapproves a State plan, or an amendment to a State plan, the Secretary gives reasonable notice and an opportunity for a hearing to the State board.

(b) In reviewing a State plan, or an amendment to a State plan, the Secretary considers available comments from the State legislature, the State job training coordinating council, and the State council on vocational education.

(Sec. 114; 20 U.S.C. 2324)

Subpart D—How Does a State Make an Award to an Eligible Recipient?

§ 401.40 How does a State carry out the State Vocational Education Program?

(a) Unless otherwise indicated in the regulations in this part, a State board shall carry out projects, services, and activities under the State Vocational Education Program—

(1) Directly;

(2) Through a school operated by the State board;

(3) Through awards to State agencies or institutions such as vocational schools or correctional institutions; or

(4) Through awards to eligible recipients.

(b) For the purpose of paragraph (a) of this section, a State board acts directly when it—

(1) Carries out projects, services, or activities using its own staff (except at a school operated by the State board); or

(2) Contracts for State-wide projects, services, or activities such as research, curriculum development, and teacher training.

(c) The regulations in this part also authorize a State to carry out certain projects, services, and activities under the State Vocational Education Program by making an award to an entity other than an eligible recipient, such as a community-based organization, or an employer.

(d)(1) For the purpose of requirements dealing with local applications (§ 401.41) and the distribution of funds to eligible recipients (§§ 401.19(a) (4) and (5) and 401.19(b)(4)), projects, services, and activities carried out by a school operated by the State board under paragraph (a)(2) of this section, carried out by a State agency or institution under paragraph (a)(3) of this section, or carried out by an entity other than an eligible recipient under paragraph (c) of this section, are considered to be carried out by an eligible recipient.

(2) For the purpose of § 401.19(a)(4), regarding the requirement that a State distribute at least eighty percent of its total basic State grant allotment to eligible recipients, a State shall consider all funds awarded to an eligible recipient as part of this local portion (at least eighty percent) of the State's allotment.

(Secs. 113(b) (4), (5), 115, 201(f)(3), 201(h)(2), 203(a), 252(b); 20 U.S.C. 2323(b) (4), (5), 2325, 2331(f)(3), 2331(h)(2), 2333(a), 2342(b); House Report No. 98-1129, 98th Cong. 2d Sess. p. 96 (1984))

§ 401.41 What are the local application requirements under the State Vocational Education Program?

(a) Except as provided in paragraph (d) of this section, and unless otherwise provided by the regulations in this part, each eligible recipient that desires to receive funds under the State vocational education program shall submit to the State board an application for the use of those funds that—

(1) Satisfies the requirements established by the State board; and

(2) Is for any period of time covered by the State plan.

(b) The State board shall establish requirements for local applications, and amendments to local applications, except that each local application must—

(1) Describe the vocational education programs, services, and activities to be funded; and

(2) Describe how the proposed programs, services, and activities will be coordinated with relevant programs under the JTPA and the Adult Education Act, in order to avoid duplication.

(c) The eligible recipient shall make the local application available for review and comment by interested parties, including the appropriate administrative entity under the JTPA.

(d) The State board may exempt an eligible recipient which provides relatively few vocational education programs, services, and activities with a limited total of Federal and State funds, from the requirements of this section.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030)

(Sec. 115; 20 U.S.C. 2325)

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic State Grant?

§ 401.50 What are the components of the basic State grant?

The basic State grant, authorized by Title II of the Act, consists of two programs—

(a) The Vocational Education Opportunities Program; and

(b) The Vocational Education Improvement, Innovation, and Expansion Program.

(20 U.S.C. 2331 *et seq.*)

§ 401.51 What is the Vocational Education Opportunities Program?

Each State shall use funds reserved in accordance with §§ 401.90(b) and 401.92 to provide vocational education services and activities designed to meet the special needs of, and enhance the participation of—

(a) Handicapped individuals;

(b) Disadvantaged individuals;

(c) Adults who are in need of training or retraining;

(d) Individuals who are single parents or homemakers;

(e) Individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education; and

(f) Criminal offenders who are serving in a correctional institution.

(Sec. 201 (a), (b); 20 U.S.C. 2331 (a), (b))

§ 401.52 How may funds under the Vocational Education Opportunities Program be used to serve handicapped individuals?

(a) A State shall use funds reserved for handicapped individuals in accordance with § 401.92(a) only for the Federal share of expenditures that are limited to supplemental or additional staff, equipment, materials, and services that are not provided to other individuals in vocational education and that are essential for handicapped individuals to participate in vocational education.

(b) If the conditions of handicapped students require a separate program, each State may use these funds only for the Federal share of the costs of the services and activities in separate vocational education programs for handicapped individuals which exceed the average per-pupil expenditures for the comparable regular vocational education services and activities of the eligible recipient.

(Sec. 201 (c)(1); 20 U.S.C. 2331(c)(1))

§ 401.53 How may funds under the Vocational Education Opportunities Program be used to serve disadvantaged individuals?

(a)(1) A state shall use funds reserved for disadvantaged individuals in accordance with § 401.92(b) only for the Federal share of expenditures that are limited to supplemental or additional staff, equipment, materials, and services that are not provided to other individuals in vocational education and that are essential for disadvantaged individuals to participate in vocational education.

(2) If the conditions of disadvantaged students require a separate program, each State may use these funds only for the Federal share of the costs of the services and activities in separate vocational education programs for disadvantaged individuals which exceed the average per-pupil expenditures for the comparable regular vocational education services and activities of the eligible recipient.

(b)(1) A State may use funds described in paragraph (a) of this section for—

(i) The improvement of vocational education services and activities designed to provide equal access to quality vocational education to disadvantaged individuals; and

(ii) Services and activities which apply the latest technological advances to courses of instruction for disadvantaged individuals.

(2) A State may also use funds described in paragraph (a) of this section to acquire modern machinery and tools, but only for schools at which at least seventy-five percent of the students enrolled are economically disadvantaged.

(Sec. 201 (c)(2), (d); 20 U.S.C. 2331 (c)(2), (d))

§ 401.54 How may funds under the Vocational Education Opportunities Program be used to serve adults who are in need of training or retraining?

(a) A State shall use funds reserved for adults in need of training or

retraining in accordance with § 401.92(c) to provide, improve, and expand adult and postsecondary vocational education services and activities to train and retrain adults.

(b) A State may use funds described in paragraph (a) of this section for—

(1) Services and activities developed in coordination with the State agency administering Title III of the JTPA;

(2) Additional training under Title III of the JTPA;

(3) Vocational education programs for training or retraining adults, including programs for older individuals and displaced homemakers;

(4) Services for adults in other vocational education programs, including the costs of instruction and the costs of keeping school facilities open longer;

(5) Individuals who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward as associate of other degree, but which are not designed as baccalaureate or higher degree programs; and

(6) Individuals who have already entered the labor market, or have completed or left high school, and who are not described in paragraph (b)(5) of this section.

(Sec. 201(e); 20 U.S.C. 2331(e))

§ 401.55 How may funds under the Vocational Education Opportunities Program shall be used to serve individuals who are single parents or homemakers?

A State shall use funds reserved for individuals who are single parents or homemakers in accordance with § 401.92(d) only to—

(a) Provide, subsidize, reimburse, or pay for vocational education and training activities, including basic literacy instruction and necessary educational materials, that will give single parents or homemakers marketable skills;

(b) Make subgrants to eligible recipients for expanding vocational education services where this expansion directly increases the eligible recipients' capacity for providing single parents or homemakers with marketable skills;

(c) Make subgrants to community-based organizations for the provision of vocational education services to single parents or homemakers, if the State determines that a community-based organization has demonstrated effectiveness in providing comparable or related services to single parents or homemakers, taking into account the demonstrated performance of such an organization in terms of the cost and quality of its training and the characteristics of the participants;

(d) Make vocational education and training programs more accessible to single parents or homemakers by assisting them with child care or transportation services or by organizing and scheduling those programs so that they are more accessible; or

(e) Provide information to single parents or homemakers to inform them of vocational education programs and related support services.

(Sec. 201(f); 20 U.S.C. 2331(f))

§ 401.56 How may funds under the Vocational Education Opportunities Program shall be used to serve individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education?

(a) A State shall use funds reserved for individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education in accordance with § 401.92(e) for—

(1) Programs, services, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education programs;

(2) Vocational education programs, services, and activities for girls and women aged 14 through 25, designed to enable the participants to support themselves and their families; and

(3) Support services for individuals participating in vocational education programs, services, and activities described in paragraphs (a)(1) and (a)(2) of this section, including dependent-care services and transportation.

(b) A State may waive the age limitations in paragraph (a)(2) of this section if the person described in § 401.13(a) determines that the waiver is essential to meet the objectives of this section.

(Sec. 201(g); 20 U.S.C. 2331(g))

§ 401.57 How may funds under the Vocational Education Opportunities Program be used for criminal offenders who are serving in a correctional institution?

A State shall use funds reserved for criminal offenders who are serving in a correctional institution in accordance with § 401.92(f) to provide vocational education services and activities designed to meet the special needs of, and to enhance the participation of, criminal offenders who are serving in correctional institutions.

(Sec. 201(b); 20 U.S.C. 2331(b))

§ 401.58 In what additional ways may funds under the Vocational Education Opportunities Program be used?

(a) In addition to the services and activities authorized by §§ 401.52 through 401.57, a State may use funds under the Vocational Education Opportunities Program, in accordance with those sections, for—

(1) Basic skills instruction for vocational education students which is related to their instructional program, if the State board determines that the instruction is necessary to carry out the purposes of the Vocational Education Opportunities Program;

(2) Vocational education through arrangements with private vocational training institutions, private postsecondary educational institutions, and employers if these institutions or employers—

(i)(A) Can make a significant contribution to obtaining the objectives of the state plan; and

(B) Can provide substantially equivalent training at a lesser cost; or

(ii) Can provide equipment or services not available in public institutions; and

(3) Placement services for students who have successfully completed vocational education programs.

(b) To the extent practicable, a State shall include work-site programs, such as cooperative vocational education, work-study, and apprenticeship programs, in the programs it supports with funds under the Vocational Education Opportunities Program.

(Sec. 201 (h), (i); 20 U.S.C. 2331 (h), (i))

§ 401.59 What is the Vocational Educational Improvement, Innovation, and Expansion Program?

(a) A State shall use funds allotted under its basic State grant, and reserved in accordance with § 401.90(b)(2), to meet the needs identified in the State plan to expand, improve, modernize or develop high quality vocational education projects, services, or activities that will—

(1) Provide the Nation's existing and future workforce with marketable skills;

(2) Improve productivity; and

(3) Promote economic growth.

(b)(1) Funds used under § 401.60(a) may not be used to maintain existing projects, services, or activities.

(2) Funds used under § 401.60 (b) or (c) may be used to maintain existing services or activities.

(c) For the purpose of paragraph (b)(1) of this section, any vocational education project, service, or activity that was not provided by the recipient during the instructional term that preceded funding under this program may be considered a new, expanded, improved, modernized, or developed project, service, or activity, and may be considered so for up to three years.

(Secs. 2(1), 251(a); 20 U.S.C. 2301(1), 2341(a))

§ 401.60 How may funds under the Vocational Education Improvement, Innovation, and Expansion Program be used?

(a) A State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program to accomplish the purposes described in § 401.59, by supporting—

(1) The improvement of vocational education programs within the State designed to improve the quality of vocational education, including high-technology programs involving an industry-education partnership as described in § 401.78 and apprenticeship training programs;

(2) The expansion of vocational education activities necessary to meet student needs and the introduction of new vocational education programs, particularly in economically depressed urban and rural areas of the State;

(3) The introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(4) The creation or expansion of programs to train workers in skilled occupations needed to revitalize businesses and industries or to promote the entry of new businesses and industries into a State or community;

(5) Exemplary and innovative programs which stress new and emerging technologies and which are designed to strengthen vocational education services and activities;

(6) The improvement and expansion of postsecondary and adult vocational education programs and related services for out-of-school youth and adults, which may include upgrading the skills of—

(i) Employed workers;

(ii) Workers who are unemployed or threatened with unemployment as a result of technological change or industrial dislocation;

(iii) Workers with limited English proficiency; and

(iv) Displaced homemakers and single heads of households;

(7) The improvement and expansion of career counseling and guidance projects, services, or activities authorized by §§ 401.76 and 401.105;

(8) The expansion and improvement of programs at area vocational education schools;

(9) The conduct of special courses and teaching strategies designed to teach the fundamental principles of mathematics and science through practical applications which are an integral part of the student's prevocational or vocational program;

(10) The activities of vocational student organizations that are carried out as an integral part of the secondary and postsecondary instructional program;

(11) Prevocational programs;

(12) Modern industrial arts programs and agricultural arts programs;

(13) The provision of vocational education through arrangements with private vocational education institutions, private postsecondary educational institutions, and employers of these institutions or employers—

(i)(A) Can make a significant contribution to attaining the objectives of the Act; and

(B) Can provide substantially equivalent preparation at a lesser cost; or

(ii) Can provide equipment or services not available in public institutions; and

(14) The improvement or expansion of any other vocational education activities authorized under the Vocational Education Opportunities Program that would accomplish the purposes described in § 401.59.

(b) A State may also use funds to accomplish the purposes described in § 401.59, by supporting—

(1) Technical assistance and research;

(2) Programs relating to curriculum development in vocational education within the State, including the application of basic skill training;

(3) The assignment of personnel to work with employers and eligible recipients in a region in order to coordinate efforts to ensure that vocational programs are responsive to the labor market and supportive of apprenticeship training programs;

(4) The acquisition of equipment and the renovation of facilities necessary to improve or expand vocational education programs within the State;

(5) The provision of stipends for students entering or already enrolled in vocational education programs and who have acute economic needs which cannot be met under work-study programs. The amount of a stipend may be the larger of either the minimum wage prescribed by State or local law, or the minimum hourly wage set under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended;

(6) Placement services for students who have successfully completed vocational education programs, including special services for handicapped individuals and cooperative efforts with rehabilitation programs;

(7) Day care services for children of students in secondary and postsecondary vocational education programs;

(8) The construction of area vocational education school facilities in areas having a demonstrated need for those facilities;

(9) The acquisition of high-technology equipment for vocational education programs; and

(10) The acquisition and operation of communications and telecommunications equipment for vocational education programs.

(c) A State shall use funds under this program for subgrants to support inservice and preservice training designed to increase the competence of vocational education teachers, counselors, and administrators, with special emphasis on the integration of handicapped and disadvantaged students in regular courses of vocational education.

(Sec. 251; 20 U.S.C. 2341)

§ 401.61 How may a State distribute funds under the Vocational Education Improvement, Innovation, and Expansion Program?

(a)(1) Subject to the requirements of §§ 401.59 and 401.60, a State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program in the manner best suited to carry out the purposes of the Act as implemented through the State vocational education program in that State.

(2) Any project assisted under the Vocational Education Improvement, Innovation, and Expansion Program must be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of students involved in the project.

(b) In addition to eligible recipients, a State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program to make awards to community-based organizations of demonstrated effectiveness—

(1) In areas of the State in which there is an absence of sufficient vocational education facilities;

(2) In areas of the State in which the vocational education programs do not adequately address the needs of disadvantaged students; or

(3) Wherever the community-based organization can better serve disadvantaged students.

(Sec. 252; 20 U.S.C. 2342)

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

§ 401.70 What are the Special Programs?

(a) The Special Programs authorized by Title III of the Act are the—

(1) State Assistance for Vocational Education Support Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education Program;

(3) Adult Training, Retraining, and Employment Development Program;

(4) Comprehensive Career Guidance and Counseling Program; and

(5) Industry-Education Partnership for Training in High-Technology Occupations Program.

(b) From the amount appropriated under section 3(b) of the Act for each program in paragraph (a) of this section, the Secretary makes a separate allotment to each State.

(Sec. 3(b), Title III; 20 U.S.C. 2302(b), 2351 *et seq.*)

§ 401.71 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) The State shall provide, in accordance with its State plan, and from its allotment for this program, financial assistance to joint projects of eligible recipients and community-based organizations within the State that provide the following special vocational education services and activities:

(1) Outreach programs that facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training.

(2) Transitional services such as attitudinal and motivational prevocational training programs.

(3) Prevocational educational preparation and basic skills development, conducted in cooperation with business concerns.

(4) Special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs.

(5) Career intern programs.

(6) The assessment of students' needs in relation to vocational education and jobs.

(7) Guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(b) Handicapped individuals who are educationally or economically disadvantaged may participate in projects under this program.

(Secs. 302, 521(5); 20 U.S.C. 2352, 2471(5))

§ 401.72 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board may also establish requirements relating to the contents of the application, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served, which includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severly economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030)

(Sec. 301; 20 U.S.C. 2351)

§ 401.73 What activities does the Secretary support under the Consumer and Homemaking Education Program?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Consumer education;

(iii) Family living and parenthood education;

(iv) Child development and guidance;

(v) Housing and home management, including resource management; and

(vi) Clothing and textiles.

(b) The State shall use the funds described in paragraph (a) of this section to support projects, services, and activities—

(1) In economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update consumer and homemaking education programs, especially those that specifically address needs described in paragraphs (b) (1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Managing home and work responsibilities;

(iv) Improving responses to individual and family crises;

(v) Strengthening parenting skills;

(vi) Assisting aged and handicapped individuals;

(vii) Improving nutrition;

(viii) Conserving limited resources;

(ix) Understanding the impact of new technology on life and work;

(x) Applying consumer and homemaking education skills to jobs and careers; and

(xi) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;
(ix) The upgrading of equipment;
(x) Teacher supervision; and
(xi) State administration and leadership, including the activities of student organizations.

(Secs. 311, 312(a), (b); 20 U.S.C. 2361, 2362 (a), (b))

§ 401.74 What are the purposes of the Adult Training, Retraining, and Employment Development Program?

The purposes of the Adult Training, Retraining, and Employment Development Program are—

(a) To provide financial assistance to the States to enable them to expand and improve vocational education programs designed to meet urgent needs for training, retraining, and employment development of adults who have completed or left high school and are preparing to enter or have entered the labor market in order to equip adults with the competencies and skills required for productive employment; and

(b) To ensure that those programs are relevant to the labor market needs and accessible to all segments of the population, including women, minorities, handicapped individuals, individuals with limited English proficiency, workers fifty-five and older, and economically disadvantaged individuals.

(Sec. 321(b); 20 U.S.C. 2371(b))

§ 401.75 What activities does the Secretary support under the Adult Training, Retraining, and Employment Development Program?

The State shall conduct, in accordance with its State plan, and from its allotment for this program, the following adult training, retraining, and employment development projects, services, and activities:

(a) Vocational education and employment development projects, services, and activities that are authorized under the basic State grant and are designed to meet the needs of—

(1) Individuals who have graduated from or left high school and who need additional vocational education for entry into the labor force;

(2) Unemployed individuals who require training to obtain employment or increase their employability;

(3) Employed individuals who require retraining to retain their jobs, or who need training to upgrade their skills to qualify for higher paid or more dependable employment;

(4) Displaced homemakers and single heads of households who are entering or re-entering the labor force;

(5) Employers who require assistance in training individuals for new employment opportunities or in retraining employees in new skills required by changes in technology, products, or processes; and

(6) Workers fifty-five and older.

(b) Short term retraining projects designed to upgrade or update skills in accordance with changed work requirements.

(c) Education and training projects designed cooperatively with employers, such as—

(1) Institutional and work-site programs, including apprenticeship training programs (or combinations of these programs) especially tailored—

(i) To the needs of an industry or group of industries for skilled workers, technicians, or managers; or

(ii) To assist the existing work force or that industry or group of industries to adjust to changes in technology or work requirements; and

(2) Quick-start, customized training—

(i) For workers in new and expanding industries; or

(ii) To place workers in jobs that are difficult to fill because of a shortage of workers with the requisite skills.

(d) In order to serve more effectively the individuals described in paragraph (a) of this section, build more effective linkages between—

(1) Vocational education programs and private sector employers, through a variety of programs including programs in which secondary school students are employed on a part-time basis as registered apprentices, with a transition to full-time apprenticeships upon graduation; and

(2) Eligible recipients and economic development agencies and other public and private agencies providing job training and employment services.

(e) Cooperative education programs, between public and private sector employers and economic development agencies, including seminars in institutional or work-site settings designed to improve management and increase productivity.

(f) Entrepreneurship training programs that assist individuals in the establishment, management, and operation of small business enterprises.

(g) Recruitment, job search assistance, counseling, remedial services, and information and outreach programs designed to encourage and assist males and females to take advantage of vocational education programs and services, with particular attention to reaching women, older workers, individuals with limited English proficiency, handicapped individuals, and disadvantaged individuals.

(h) Curriculum development, acquisition of instructional equipment and materials, personnel training, pilot projects, and additional, related services and activities required to carry out effectively the Adult Training, Retraining, and Employment Development Program.

(i) The costs of serving adults in other vocational education programs, including paying the costs of instruction, or the costs of keeping school facilities open longer.

(j) Related instruction for apprentices in apprenticeship training programs as defined in 34 CFR 400.4(b).

(Sec. 322(b)(1); 20 U.S.C. 2372(b)(1))

§ 401.76 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Program?

(a) The State shall conduct, in accordance with its State plan and from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decisionmaking, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education and job training; and

(2)(i) Encourage the elimination of sex, age, handicapping conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, handicapped individuals, and the economically disadvantaged.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and conseling projects, such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership; and

(ix) State and local administration, including supervision, subject to § 401.93(b);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act;

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Sec. 332 (a), (b); 20 U.S.C. 2382 (a), (b))

§ 401.77 What are the purposes of the Industry-Education Partnership for Training in High-Technology Occupations Program?

The purposes of the Industry-Education Partnership for Training in High-Technology Occupations Program are to—

(a) Provide incentives for business and industry and the vocational education community to develop programs to train the skilled workers needed to produce, install, operate, and maintain high-technology equipment, systems, and processes; and

(b) Ensure that those programs are relevant to the labor market and accessible to all segments of the population, including women, minorities, handicapped individuals, and economically disadvantaged individuals.

(Sec. 341(b); 20 U.S.C. 2391(b))

§ 401.78 What activities does the Secretary support under the Industry-Education Partnership for Training in High-Technology Occupations Program?

The State shall, in accordance with the State plan, under § 401.19(a) (20) through (22), and from its allotment for this program, establish and operate projects, services, and activities including—

(a) Necessary administrative costs of the State board and of eligible recipients associated with the establishment and operation of projects;

(b) Training and retraining of instructional and guidance personnel;

(c) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(d) The acquisition and operation of communications, telecommunications, and other high-technology equipment; and

(e) Other activities authorized under the Special Programs that are essential to the successful establishment and operation of projects, services and activities under the Industry-Education Partnership for Training in High-Technology Occupations Program, including activities and related services to ensure access of women, minorities, handicapped individuals, and economically disadvantaged individuals.

(Sec. 343(a); 20 U.S.C. 2393(a))

§ 401.79 What are the special considerations under the Industry-Education Partnership for Training in High-Technology Occupations Programs?

The State board, in approving projects, services, and activities under the Industry-Education Partnership for Training in High-Technology Occupations Program, shall give special consideration to the following:

(a) The level and degree of business and industry participation in the development and operation of the project.

(b) The current and projected demand within the State or relevant labor market area for workers with the level and type of skills the project is designed to produce.

(c) The overall quality of the proposal, with particular emphasis on the probability the prospective trainees will successfully complete the program and the capability of the eligible recipient, with assistance from participating business or industry, to provide high quality training for skilled workers and technicians in high technology.

(d) The commitment to serve all segments of the population, including women, minorities, handicapped individuals, and economically disadvantaged individuals, as demonstrated by the applicant's special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance.

(Sec. 343(b); 20 U.S.C. 2393(b))

§ 401.80 What additional fiscal requirements apply to the Industry-Education Partnership for Training in High-Technology Occupations Programs?

(a)(1) The business and industrial share of the costs required by § 401.19(a)(21) may be in the form of either expenditures or the fair market value of in-kind contributions such as facilities, overhead, personnel, and equipment.

(2) The State shall use equal amounts from its allotment under this program and from its basic State grant allotment to provide the Federal share of the cost of projects services and activities under this program.

(3) If an eligible recipient demonstrates, to the satisfaction of the State board, that it is incapable of providing all or a part of the non-Federal portion of the costs of projects, services, and activities under this program, as required by §§ 401.19(a) (20) through (22) and 401.78, the State board may use funds under the Vocational Education Improvement, Innovation, and Expansion Program, authorized by § 401.59, or funds available from State sources, to replace the shortfall in the non-Federal portion.

(b) A State may use no more than a total of ten percent of its allotment under this program for the first year this program is implemented, and a total of five percent of its allotment for each succeeding year, for the administration of this program by both the State and eligible recipients.

(Secs. 342(c), 343(c); 20 U.S.C. 2392(c), 2393(c))

Subpart G—What Conditions Must the State Meet Under the State Vocational Education Program?

§ 401.90 How does a State reserve funds under the basic State grant?

From its allotment under the basic State grant program, authorized by Title II of the Act, a State shall reserve—

(a) The amount of funds for State administration described in § 401.91; and

(b) From the remainder—

(1) Fifty-seven percent for the Vocational Education Opportunities Program; and

(2) Forty-three percent for the Vocational Education Improvement, Innovation, and Expansion Program.

(Sec. 102(a); 20 U.S.C. 2312(a))

§ 401.91 How does a State reserve funds under the basic State grant for State administration?

(a) A State shall reserve no more than seven percent of its allotment, subject to program (b) of this section, under the basic State grant program for State administration of the State plan.

(b)(1) From the amount reserved for State administration under paragraph (a) of this section, a State shall reserve the amount it needs to comply with § 401.13, but not less than $60,000.

(2) If the amount reserved under paragraph (b)(1) of this section exceeds one percent of the State's allotment under the basic State grant program, a State may reserve from that allotment an additional amount for State administration which is in excess of the seven percent permitted under paragraph (a) of this section and which equals the amount of that excess.

(c) For the purpose of § 401.19(a)(4), regarding the requirement that a State distribute at least eighty percent of its total basic State grant allotment to eligible recipients, a State shall consider the funds for State administration under paragraphs (a) and (b) of this section as part of the State's portion (the portion that may not exceed twenty percent) of the State's allotment.

Example: The allotment of State X under the basic State grant program is $20,000,000. State X determines that $220,000 is needed for it to comply with § 401.13. State X is authorized to reserve seven percent of its basic State grant allotment, or $1,400,000, for State administration. However, because the amount needed to comply with § 401.13 exceeds one percent of its allotment by $20,000, State X may reserve an additional $20,000 for State administration. (For example, this additional $20,000 may be taken from the funds otherwise reserved for the Vocational Education Improvement, Innovation, and Expansion Program.) Therefore, the total amount available for State administration is $1,420,000. Assuming the State reserves twenty percent of its allotment for State-wide activities under § 401.19(a)(4), or $4,000,000, the State must count the $1,420,000 for State administration against that $4,000,000.

(Secs. 102(b), 113(b)(4), 251(a)(16); 20 U.S.C. 2312(b), 2323(b)(4), 2341(a)(16))

§ 401.92 How does a State reserve funds under the Vocational Education Opportunities Program?

From the amount reserved for the Vocational Education Opportunities Program under § 401.90(b)(1), a State shall reserve the following amounts—

(a) Ten percent of the total amount described in § 401.90(b) for handicapped individuals;

(b) Twenty-two percent of the total amount described in § 401.90(b) for disadvantaged individuals;

(c) Twelve percent of the total amount described in § 401.90(b) for adults who are in need of training and retraining;

(d) Eight and one-half percent of the total amount described in § 401.90(b) for individuals who are single parents or homemakers;

(e) Three and one-half percent of the total amount described in § 401.90(b) for individuals who are participants in programs designed to eliminate sex bias and stereotyping in vocational education; and

(f) One percent of the total amount described in § 401.90(b) for criminal offenders who are in correctional institutions.

Example: Assuming the same facts in the example under § 401.91, State X has available for programs $18,580,000 under the basic State grant after reserving $1,420,000 for State administration. Of this $18,580,000, $7,989,400 ($18,580,000×43%) is reserved for the Vocational Education Improvement, Innovation, and Expansion Program and $10,590,600 ($18,580,000×57%) for the Vocational Education Opportunities Program. Under the latter program, $1,858,000 ($18,580,000×10%) is reserved for handicapped individuals; $4,087,600 ($18,580,000×22%) is reserved for disadvantaged individuals; $2,229,600 ($18,580,000×12%) is reserved for adults who are in need of training and retraining; $1,579,300 ($18,580,000×8.5%) is reserved for individuals who are single parents and homemakers; $650,300 ($18,580,000×3.5%) is reserved for individuals who are participating in programs designed to eliminate sex bias and sex stereotyping in vocational education; and $185,800 ($18,580,000×1%) is reserved for criminal offenders who are in correctional institutions.

(Sec. 202; 20 U.S.C. 2332)

§ 401.93 What are the administrative cost requirements under the State Vocational Education Program?

(a) *Basic State grant.* To administer—

(1) Its State plan, including Special Programs, a State shall use the amount reserved under § 401.91; and

(2) Its projects, services, and activities under the basic State grant, an eligible recipient may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award is made.

(b) *Special Programs.* To administer—

(1) Each of the Special Programs under its State plan (other than the Industry-Education Partnership for Training in High-Technology Occupations Program) a State may use, in addition to funds reserved under § 401.91, no more than the amount of funds from its allotment for each program that is necessary and reasonable for the proper and efficient State administration of that program; and

(2) Its projects, services, and activities supported by an award under one of the Special Programs, other than the Industry-Education Partnership for Training in High-Technology Occupations Program, an eligible recipient may use no more than the amount of funds that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award is made.

(Sec. 102(b), Title II, Title III, Sec. 502(a)(1), (2); 20 U.S.C. 2312(b), 2331–2342, 2351–2393, 2462(a)(1), (2))

§ 401.94 What are the cost-sharing requirements under the State Vocational Education Program?

(a) The Secretary pays no more than the Federal share of costs under the State Vocational Education Program for each fiscal year.

(b) For the purpose of paragraph (a) of this section—

(1) Under the basic State grant, the Federal share of the cost of—

(i) State administration, except under paragraph (b)(4) of this section, is fifty percent;

(ii) The administration of projects, services, and activities by an eligible recipient, if fifty percent;

(iii) Projects, services, and activities for handicapped individuals, disadvantaged individuals, and adults who are in need of training and retraining under the Vocational Education Opportunities Program, if fifty percent;

(iv) Projects, services, and activities for individuals who are single parents or homemakers, individuals who are participants in programs designed to

eliminate sex bias and stereotyping in vocational education, and criminal offenders who are in correctional institutions under the Vocational Education Opportunities Program, is one hundred percent; and

(v) Projects, services, and activities under the Vocational Education Improvement, Innovation, and Expansion Program, if fifty percent;

(2) Under the Special Programs, the Federal share of the cost of—

(i) State administration, is fifty percent;

(ii) The administration of projects, services, and activities by an eligible recipient, if fifty percent; and

(iii) Projects, services, and activities, unless otherwise indicated in the regulations in this part, is one hundred percent;

(3) The Federal share of the cost of the State council on vocational education is one hundred percent; and

(4) The Federal share of the cost of complying with § 401.13 of this part is one hundred percent.

(c) Unless otherwise provided by the regulations in this part, a State or eligible recipient may not use the value of in-kind contributions to satisfy a cost-sharing requirement under the State Vocational Education Program.

Example: Assuming the same facts in the example under § 401.91, the Secretary pays one hundred percent of the $220,000 the State needs to comply with § 401.13. The State would be required to match, dollar-for-dollar, the remaining $1,200,000 ($1,420,000 minus $220,000) for State administration of the basic State grant portion of the State plan.

(Sec. 502(a); 20 U.S.C. 2462(a); House Report No. 98-1129, 98th Cong. 2d Sess. p. 98 (1984))

§ 401.95 How does a State allocate funds for handicapped individuals under the Vocational Education Opportunities Program?

A State shall allocate funds reserved for handicapped individuals in accordance with § 401.92(a) to participating eligible recipients according to the following formula:

(a) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of economically disadvantaged individuals enrolled in those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals enrolled in all of those eligible recipients within the State in that preceding program year.

(b) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of handicapped students served in vocational education programs by those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals served in vocational education programs by all of those eligible recipients within the State in that preceding program year.

Example: Assume that eligible recipient X enrolls 100 economically disadvantaged individuals and serves in its vocational education program 50 handicapped individuals. Assume further that among all participating eligible recipients, there are 1000 of those persons enrolled and 400 of those individuals are served, respectively. In the succeeding program year, eligible recipient X is eligible to receive under the Vocational Education Opportunities Program an amount for handicapped individuals equal to 1/10 (or 100 economically disadvantaged individuals enrolled by eligible recipient X/1000 economically disadvantaged individuals enrolled in the State) of ½ of the amount reserved for such individuals under § 401.92(a) and ⅛ (or 50 handicapped individuals served by eligible recipient X/400 handicapped individuals served in the State) of ½ of the same amount.

(Sec. 203(a)(1); 20 U.S.C. 2333(a)(1))

§ 401.96 How does a State allocate funds for disadvantaged individuals under the Vocational Education Opportunities Program?

(a) A State shall allocate funds reserved for disadvantaged individuals in accordance with § 401.92(b) to participating eligible recipients according to the following formula:

(1) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of economically disadvantaged individuals enrolled in those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals enrolled in all of those eligible recipients within the State in that preceding program year.

(2) Fifty percent of the amount reserved must be allocated to participating eligible recipients on the basis of the relative number of disadvantaged individuals and individuals with limited English proficiency served in vocational education programs by those eligible recipients in the program year preceding the program year in which the allocation is made, compared to the total number of those individuals served in vocational education programs by all of those eligible recipients within the State in that preceding program year.

(b) A State shall ensure that funds allocated among participating eligible recipients under paragraph (a) of this section are used by each participating eligible recipient for vocational education services and activities for individuals with limited English proficiency in at least the same proportion as the number of individuals with limited English proficiency served by that eligible recipient in the fiscal year preceding the fiscal year for which the determination is made bears to the population of the State in that year.

Example: Assume that eligible recipient X enrolls 100 economically disadvantaged individuals and serves in its vocational education program 50 disadvantaged and limited English proficient individuals. Assume further that among all participating eligible recipients, there are 1000 of those persons enrolled and 400 of those individuals served, respectively. In the succeeding program year, eligible recipient X is eligible to receive under the Vocational Education Opportunities Program an amount for disadvantaged individuals equal to 1/10 (or 100 economically disadvantaged individuals enrolled in eligible recipient X/1000 economically disadvantaged individuals enrolled in the State) of ½ of the amount reserved for those individuals under § 401.92(b) and ⅛ (or 50 disadvantaged and limited English proficient individuals served by eligible recipient X/400 disadvantaged and limited English proficient individuals served in the State) of ½ of that same amount.

(Sec. 203(a)(2), (3); 20 U.S.C. 2333(a)(2), (3))

§ 401.97 How does a State match funds for handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?

A State shall provide the non-Federal share of the cost of projects, services, and activities for handicapped individuals and for disadvantaged individuals under the Vocational Education Opportunities Program equitably from State and local sources, except that the State shall provide the non-Federal share of the cost from State sources if the State board determines that an eligible recipient cannot reasonably be expected to provide for those costs from local sources.

(Sec. 502(b); 20 U.S.C. 2462(b))

§ 401.98 How does an eligible recipient use community-based organizations under the Vocational Education Opportunities Program?

Each local educational agency or other eligible recipient shall, to the extent feasible, use community-based organizations of demonstrated effectiveness to carry out projects, services, and activities under the Vocational Education Opportunities Program in areas of the State in which—

(a) There is an absence of sufficient vocational education facilities;

(b) Vocational education programs do not adequately address the needs of disadvantaged students; or

(c) The eligible recipient determines that the community-based organization can better serve disadvantaged students.

(Sec. 203(a)(4); 20 U.S.C. 2333(a)(4))

§ 401.99 What kinds of joint projects are authorized under the Vocational Education Opportunities Program?

(a) A State board may encourage any eligible recipient within the State that is eligible under the regulations in this part, or under the State plan, to receive an award of no more than $1,000 for any program year under the Vocational Education Opportunities Program, to operate its project, services, or activities jointly with another eligible recipient.

(b) Each local educational agency may use funds allocated under § 401.95 for joint projects with one or more other local educational agencies.

(Sec. 203 (a)(5), (b); 20 U.S.C. 2333 (a)(5), (b))

§ 401.100 How does a State distribute funds not reserved for handicapped or disadvantaged individuals under the Vocational Education Opportunities Program?

The State board shall establish the State's criteria for distributing funds under the Vocational Education Opportunities Program (other than those funds reserved for handicapped or disadvantaged individuals under § 401.92 (a) and (b)) to eligible recipients and, under § 401.55(c), to community-based organizations. The State's criteria must be designed to accomplish the purposes of the Vocational Education Opportunities Program.

(Sec. 203(c); 20 U.S.C. 2333(c))

§ 401.101 What are the "equal access" provisions that apply to handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?

(a) Each local educational agency that receives an allocation of funds under §§ 401.95 and 401.96 shall use those funds to provide information to handicapped and disadvantaged students and their parents concerning the opportunities available in vocational education and the requirements for eligibility for enrollment in vocational education programs, at least one year before the students enter the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(b)(1) Each local educational agency described in paragraph (a) of this section shall provide to each handicapped or disadvantaged student that enrolls in a vocational education program—

(i) An assessment of the interests, abilities, and special needs of that student with respect to completing successfully the vocational education program;

(ii) Special services, including adaptation of curriculum, instruction, equipment, and facilities, designed to meet the needs established under paragraph (b)(1)(i) of this section;

(iii) Guidance, counseling, and career development activities conducted by professionally trained counselors who are associated with the provision of those special services; and

(iv) Counseling services designed to facilitate the transition from school to post-school employment and career opportunities.

(2) Consistent with the regulations in this part, a local educational agency may use the funds described in paragraph (a) of this section to pay for the cost of services and activities required by paragraph (b)(1) of this section.

(Sec. 204 (b), (c); 20 U.S.C. 2334 (b), (c))

§ 401.102 How must funds be used under the Consumer and Homemaking Education Program?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve home environments and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program, but not more than six percent of that allotment, to provide State leadership that is qualified by experience and preparation in home economics education.

(Secs. 312(c), 313; 20 U.S.C. 2362(c), 2363)

§ 401.103 How must a State use funds under the Adult Training, Retraining, and Employment Development Program?

(a) In making a grant to a State, the Secretary informs the State what percentage of its allotment under the Adult Training, Retraining, and Employment Development Program must be used for projects, services, and activities under that program for individuals who are single parents or homemakers.

(b) The full-time person required by § 401.13 may administer the projects, services, and activities supported with the funds described in paragraph (a) of this section.

(Secs. 3(b)(3)(B), 111(b); 20 U.S.C. 2302(b)(3)(B), 2321(b))

§ 401.104 How must a State coordinate programs under the Adult Training, Retraining, and Employment Development Program?

(a) The State board shall consult with the State job training coordinating council established under the JTPA so that the council takes account of projects under the Adult Training, Retraining, and Employment Development Program when it formulates recommendations to the Governor, for the Governor's coordination and special services plan required by section 121 of the JTPA.

(b) In order to achieve the most effective use of all Federal funds through programs that complement and supplement each other, and, to the extent feasible, provide an ongoing and integrated program of training and services for workers in need of that assistance, the State board shall adopt the procedures it considers necessary to encourage coordination between eligible recipients receiving funds under the Adult Training, Retraining, and Employment Development Program and the appropriate administrative entity established under the JTPA, in conducting their respective programs.

(Sec. 323(b); 20 U.S.C. 2373(b))

§ 401.105 How must funds be used under the Comprehensive Career Guidance and Counseling Program?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under § 401.76(b)(2)(i) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, handicapped individuals, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program, but not more than six percent of that allotment, to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(Secs. 332(c), 333; 20 U.S.C. 2382(c), 2383)

Subpart H—What are the Administrative Responsibilities of a State Under the State Vocational Education Program?

§ 401.110 What are a State's responsibilities regarding the Vocational Education Data System?

A State that receives funds under the Act shall cooperate with the Secretary in supplying the information the Secretary requires, in the form the Secretary requires, and shall comply in its reports with the Vocational Education Data System developed by the Secretary under section 421 of the Act.

(Sec. 421(b)(2); 20 U.S.C. 2421(b))

§ 401.111 What are a State's responsibilities regarding a State occupational information coordinating committee?

(a) A State that receives funds under the Act shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program.

(b) With funds made available to it by the National Occupational Information Coordinating Committee, the State occupational information coordinating committee shall—

(1) Implement an occupational information system in the State which will meet the common needs for the planning and operation of programs of the State board assisted under the Act and the programs of the administering agencies under the JTPA; and

(2) Use the occupational information system to implement a career information delivery system.

(Sec. 422(b); 20 U.S.C. 2422(b))

§ 401.112 What are a State's audit responsibilities under the Act?

A State shall obtain financial and compliance audits of any funds which it receives under the Act, and shall make these audits public within the State on a timely basis. Each State shall comply with the audit requirements of the Single Audit Act of 1984 with respect to any of its fiscal years that begin after December 31, 1984.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030)

(Sec. 505; 20 U.S.C. 2465; 31 U.S.C. 7501 *et seq.*)

§ 401.113 What are a State's responsibilities to the National Center for Research in Vocational Education?

A State shall forward to the National Center for Research in Vocational Education a copy of an abstract for each new research, curriculum development, or personnel development project it supports, and the final report on each project.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0011)

(Sec. 404(b)(6); 20 U.S.C. 2404(b)(6))

Subpart I—What are the Enforcement Procedures Under the State Vocational Education Program?

§ 401.120 What enforcement procedures may the Secretary use?

(a) In addition to using the enforcement procedures authorized by Part E of the General Education Provisions Act, the Secretary may withhold funds under the State Vocational Education Program in accordance with the provisions of section 504 of the Act. Hearings under section 504 of the Act are conducted by the Education Appeal Board.

(b)(1) The Secretary conducts any hearings held under section 453 of the General Education Provisions Act in connection with funds under the State Vocational Education Program in the State of the affected unit of local government or geographic area within the State.

(2) For the purposes of paragraph (b)(1) of this section—

(i) "Unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(ii) "Geographic area within a State" means a special purpose district or other region recognized for governmental purposes within that State which is not a unit of local government.

(Sec. 504 (a), (b), (d); 20 U.S.C. 1234, 2464 (a), (b), (d))

§ 401.121 How under the Act may an eligible recipient appeal a final action of a State board?

In accordance with the provisions of section 504(c) of the Act, an eligible recipient that is dissatisfied with the final action of the State board, or other appropriate State administering agency, with respect to the approval of its local application, may file a petition for the review of that action with the United States Court of Appeals for the circuit in which the State is located.

(Sec. 504(c); 20 U.S.C. 2464(c))

3. A new Part 407 is added to read as follows:

PART 407—BILINGUAL VOCATIONAL TRAINING PROGRAM

Subpart A—General

Sec.

407.1 What is the Bilingual Vocational Training Program?
407.2 Who is eligible to apply for assistance under this program?
407.3 What regulations apply to this program?
407.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

407.10 What types of projects may be funded?

Subpart C—How Does One Apply for a Grant?

407.20 What must an applicant include?

Subpart D—How Does the Secretary Make a Grant?

407.30 How does the Secretary evaluate an application?
407.31 What selection criteria does the Secretary use?
407.32 How does the Secretary select an application for funding?

Authority: Sec. 441(a) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2441(a), as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 407.1 What is the Bilingual Vocational Training Program?

The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for individuals with limited English proficiency to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

(Sec. 441(a)(1); 20 U.S.C. 2441(a)(1))

§ 407.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Local educational agencies (LEAs).

(3) Postsecondary educational institutions.

(4) Private nonprofit vocational training institutions.

(5) Other nonprofit organizations specially created to serve individuals who normally use a language other than English.

(b) Private for-profit agencies and organizations are eligible for contracts under this program.

(Sec. 441(a); 20 U.S.C. 2441(a))

§ 407.3 What regulations apply to this program?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 441(a); 20 U.S.C. 2441(a))

§ 407.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Sec. 441(a); 20 U.S.C. 2441(a))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 407.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Bilingual vocational training projects for individuals who have completed or left elementary or secondary school and who are available for education in a postsecondary educational institution;

(2) Bilingual vocational education and training projects for individuals who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing manpower needs, expand their range of skills, or advance in employment; and

(3) Training allowances for participants in bilingual vocational training projects.

(b) Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupations in an English language environment.

(c) In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

(Sec. 441(a), (e)(2); 20 U.S.C. 2441(a), (e)(2))

Subpart C—How Does One Apply for a Grant?

§ 407.20 What must an application include?

(a) An application must—

(1) Provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Describe a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of this program; and

(3) Be submitted to the State board or agency designated or established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(3) of this section with the application.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 441(d) (1), (2); 20 U.S.C. 2441(d) (1), (2))

Subpart D—How Does the Secretary Make a Grant?

§ 407.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 407.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 407.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 407.31.

(e) Prior to making an award, the Secretary consults with the State board designated or established under section 111 of the Act to ensure an equitable distribution of assistance among populations of individuals with limited English proficiency within the State.

(Sec. 441(a), (d)(5); 20 U.S.C. 2441(a), (d)(5))

§ 407.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for specific information that shows the need for the proposed training in the local geographic area.

(2) The Secretary looks for information that shows—

(i) The need for the proposed project, including—

(A) The employment need to be met;

(B) How that employment need will be met; and

(C) Where appropriate, ongoing and planned activities in the community that pertain to that employment need; and

(ii) The relationship of the project to any appropriate economic development plan.

(b) *Plan of operation.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Program factors.* (10 points)

(1) The Secretary reviews each application for information that shows the applicant's understanding of key program factors.

(2) The Secretary looks for information that shows—

(i) An understanding of the key methodologies and techniques used in bilingual vocational training such as—

(A) Providing training and instruction in English and the native languages of the trainees;

(B) Providing job-related English-as-a-second language instruction;

(C) Coordinating job-related English-as-a-second language instruction with the occupational training; or

(D) Providing training and guidence to prepare trainees for working in an English language environment;

(ii) Procedures for recruiting persons with limited English proficiency who are in the greatest need for bilingual vocational training;

(iii) Procedures for evaluating the skills and needs of trainees;

(iv) An understanding of the importance of appropriate counseling and follow-up activities with former trainees;

(v) That the training will provide opportunities for employment in jobs

that have potential for career advancement or opportunities for entrepreneurship; and

(vi) That the project will be coordinated with the State board or agency designated or established under section III of the Act.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(c) The Secretary looks for information that shows–

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) Private sector involvement in the planning of the project; and

(ii) Private sector involvement in the operation of the project.

(i) *Employment opportunities.* (10 points)

The Secretary looks for information and documentation of the extent to which, upon the completion of their training under this program, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be pursuing additional training related to their training under this program.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 441(a); 20 U.S.C. 2441(a))

§ 407.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 470.31, and consulting with the appropriate State board under § 407.30(e), the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the equitable distribution of projects under this program within the affected State.

(Sec. 441(d)(5); 20 U.S.C. 2441(d)(5))

4. Part 408 is revised to read as follows:

PART 408—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Subpart A—General

Sec.

408.1 What is the Bilingual Vocational Instructor Training Program?
408.2 Who is eligible to apply for assistance under this program?
408.3 What regulations apply to this program?
408.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

408.10 What types of projects may be funded?

Subpart C—How Does One Apply for a Grant?

408.20 What must an application include?

Subpart D—How Does the Secretary Make a Grant?

408.30 How does the Secretary evaluate an application?
408.31 What selection criteria does the Secretary use?
408.32 How does the Secretary select an application for funding?

Authority: Sec. 441(b) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2441(b), as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 408.1 What is the Bilingual Vocational Instructor Training Program?

The Bilingual Vocational Instructor Training Program provides financial assistance for conducting training for instructors of bilingual vocational education and training programs for individuals with limited English proficiency.

(Sec. 441(b)(1); 20 U.S.C. 2441(b)(1))

§ 408.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible to apply for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Public and private nonprofit educational institutions.

(b) Private for-profit educational institutions are eligible for contracts under this program.

(Sec 441(b)(1); 20 U.S.C. 2441(b)(1))

§ 408.3 What regulations apply to this program?

The following regulations apply to the Bilingual Vocational Instructor Training Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec 441(b); 20 U.S.C. 2441(b))

§ 408.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Sec. 441(b); 20 U.S.C. 2441(b))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 408.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating or preparing to participate in bilingual vocational training programs; and

(2) Fellowships and traineeships for individuals participating in preservice or inservice training.

(b) The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational training program in the field in which participants will be trained and can provide instructors with adequate language capabilities in the language other than English to be used in the project.

(Sec. 441(b) (2), (3))

Subpart C—How Does One Apply for a Grant?

§ 408.20 What must an application include?

An application must—

(a) Provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(c) Describe the qualifications of principal staff responsible for any project under the Bilingual Vocational Instructor Training Program;

(d) Describe minimum qualifications for trainees participating or preparing to participate in any project, and the selection process for these individuals;

(e) Contain the projected amount of the fellowships or traineeships, if any; and

(f) Contain sufficient information for the Secretary to make the determination required by § 408.10(b).

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 441(d)(1), (4); 20 U.S.C. 2441(d)(1)(4))

Subpart D—How Does the Secretary Make a Grant?

§ 408.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 408.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 408.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 408.31.

(e) Prior to making an award the Secretary consults with the State board designated or established under section 111 of the Act to ensure an equitable distribution of assistance among populations of individuals with limited English proficiency within the State.

(Sec. 441(b), (d)(5); 20 U.S.C. 2441(b), (d)(5))

§ 408.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for specific information that shows the need for the proposed training in the local geographic area.

(2) In making this determination the Secretary looks for information that shows—

(i) The need for the proposed training;

(ii) Specifically how the need will be met;

(iii) Ongoing and planned activities in the community that pertain to the need, where appropriate.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 441(b); 20 U.S.C. 2441(b))

§ 408.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 408.31, and consulting with the appropriate State board under § 408.30(e), the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the equitable distribution of projects under this program within the affected State.

(Sec.a 441(d)(5); 20 U.S.C. 2441(d)(5))

5. A new part 409 is added to read as follows:

PART 409—BILINGUAL VOCATIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

Subpart A—General

Sec.

409.1 What is the Bilingual Vocational Materials, Methods, and Techniques Program?
409.2 Who is eligible to apply for assistance under this program?
409.3 What regulations apply to this program?
409.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

409.10 What types of projects may be funded?
409.11 How does the Secretary establish priorities for this program?

Subpart C—How Does One Apply for a Grant?

409.20 What must an application include?

Subpart D—How Does the Secretary Make a Grant?

409.30 How does the Secretary evaluate an application?
409.31 What selection criteria does the Secretary use?

Authority: Sec. 441(c) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2441(c), as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 409.1 What is the Bilingual Vocational Materials, Methods, and Techniques Program?

The Bilingual Vocational Materials, Methods, and Techniques Program provides financial assistance for the development of instructional and curriculum materials, methods, or techniques for bilingual vocational training for individuals with limited English proficiency.

(Sec. 441(c)(1); 20 U.S.C. 2441(c)(1))

§ 409.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible to apply for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Educational institutions.

(3) Nonprofit organizations.

(b) The following are eligible for contracts under this program:

(1) Private for-profit organizations.

(2) Individuals.

(Sec. 441(c)(1); 20 U.S.C. 2441(c)(1))

§ 409.3 What regulations apply to this program?

The following regulations apply to the Bilingual Vocational Materials, Methods, and Techniques Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 441(c); 20 U.S.C. 2441(c))

§ 409.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Sec. 441(c); 20 U.S.C. 2441(c))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 409.10 What types of projects may be funded?

The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(a) Research in bilingual vocational training;

(b) The development of instructional and curriculum materials, methods, or techniques;

(c) Training projects to familiarize State agencies and training institutions with research findings and with successful pilot and demonstration projects in bilingual vocational education and training; and

(d) Experimental, developmental, pilot, and demonstration projects.

(Sec. 441.(c)(2); 20 U.S.C. 2441(c)(2))

§ 409.11 How does the Secretary establish priorities for this program?

(a) The Secretary may announce, through one or more notices published in the **Federal Register**, the priorities for this program, if any, from the types of projects described in § 409.10.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(Sec. 441(c)(2); 20 U.S.C. 2441(c)(2))

Subpart C—How Does One Apply for a Grant?

§ 409.20 What must an application include?

An application under this part must—

(a) Describe the qualifications of staff responsible for the project; and

(b) Provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 441(d)(1), (3); 20 U.S.C. 2441(d)(1), (3))

Subpart D—How Does the Secretary Make a Grant?

§ 409.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 409.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 409.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 409.31.

(Sec. 441(c), 20 U.S.C. 2441(c))

§ 409.31 What selection criteria does the Secretary use?

The Secretary used the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for the proposed services and activities for individuals with limited English proficiency.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need; and

(ii) Specific information about how the need will be met.

(b) *Plan or operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 441(c); 20 U.S.C. 2441(c))

6. A new Part 410 is added to read as follows:

PART 410—INDIAN AND HAWAIIAN NATIVES PROGRAM

Subpart A—General

Sec.

410.1 What is the Indian and Hawaiian Natives Program?
410.2 Who is eligible to apply for assistance under this program?
410.3 What regulations apply to this program?
410.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

410.10 What types of projects may be funded?

Subpart C—How Does One Apply for a Grant?

410.20 How are applications submitted?

Subpart D—How Does the Secretary Make a Grant?

410.30 How does the Secretary evaluate an application?
410.31 What selection criteria does the Secretary use?
410.32 What are additional factors for declining an award?
410.33 Is the Secretary's decision not to make an award under the Indian Program subject to a hearing?

Authority: Sec. 103 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2313, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 410.1 What is the Indian and Hawaiian Natives Program?

(a) The Indian and Hawaiian Natives Program provides financial assistance to Indian tribes and to organizations primarily serving and representing Hawaiian natives to plan, conduct, and administer projects, or portions of projects, that are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

(b) The Secretary is also authorized to use remaining funds under this program to enter into an agreement with the Assistant Secretary of the Interior for Indian Affairs for the operation of vocational education programs authorized by the Act in institutions serving Indians eligible to receive educational benefits as Indians from the Bureau of Indian Affairs. The Secretary of the Interior is authorized to receive funds for this purpose.

(Sec. 103(b)(1), (c); 20 U.S.C. 2313(b)(1),(c))

§ 410.2 Who is eligible to apply for assistance under this program?

(a) The following are eligible for grants, contracts, or cooperative agreements under this program:

(1) The tribal organization of any Indian tribe which is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) Any organization primarily serving and representing Hawaiian natives which is recognized by the Governor of Hawaii.

(b) Grants, contracts, or cooperative agreements under paragraph (a)(1) of this section are subject to—

(1) Section 102 of the Indian Self-Determination and Education Assistance Act; and

(2) The relevant provisions of sections 4, 5, and 6 of the Act of April 16, 1934.

(Sec. 103(b)(1),(c); 20 U.S.C. 2313(b)(1),(c); 25 U.S.C. 450f, 455–457)

§ 410.3 What regulations apply to this program?

The following regulations apply to the Indian and Hawaiian Natives Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 103; 20 U.S.C. 2313)

§ 410.4 What definitions apply to this program?

The following definitions apply to the Indian and Hawaiian Natives Program:

(a) The definitions in 34 CFR 400.4.

(b) The following additional definitions:

"Act of April 16, 1934" means the Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians and other purposes."

(Sec. 103(a)(1)(A); 48 Stat. 596; 25 U.S.C. 452–457)

"Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

(Sec. 103(a)(1)(B); 20 U.S.C. 2313(a)(1)(B))

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(25 U.S.C. 450b)

"Tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by that governing body or which is democratically elected by the adult members of the Indian community to be served by the organization, which includes the maximum participation of Indians in all phases of its activities.

(25 U.S.C. 450b)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 410.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer projects or portions of projects which are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

(b) Projects for Indians funded under this program are in addition to other programs, services, and activities made available to eligible Indians under other provisions of the Act.

Sec. 103(b)(1), (b)(3), (c); 20 U.S.C. 2313(b)(1), (b)(3), (c))

Subpart C—How Does One Apply for a Grant?

§ 410.20 How are applications submitted?

An application from a tribal organization must be submitted to the Secretary by the Indian tribe. An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(Approved by the Office of Management and Budget under OMB Control No. 1830–0013)

(Sec. 103; 20 U.S.C. 2313, 25 U.S.C. 450b)

Subpart D—How Does the Secretary Make a Grant?

§ 410.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 410.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 410.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 410.31.

(Sec. 103; 20 U.S.C. 2313)

§ 410.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed project.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed activity;

(ii) Information which shows how the need will be met; and

(iii) Ongoing and planned activities in the community which pertain to the need, where appropriate.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) of this section will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows

the quality of the evaluation plan for the project.

Cross Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are apppropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (10 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) private sector involvement in the operation of the project.

(h) *Employment Opportunities.* (10 points)

(1) The Secretary looks for information and documentation of the extent to which, upon the completion of their training under this program, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be pursuing additional training related to their training under this program.

(2) For Indian tribes only, the Secretary looks for information which shows that this employment is related to the tribal economic development plan.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 103; 20 U.S.C. 2313)

§ 410.32 What are additional factors for declining an award?

The Secretary may use any of the following additional factors in making a decision whether to award a grant or cooperative agreement to an applicant:

(a) The project duplicates an effort already being made.

(b) Funding the project would create an inequitable distribution among Indian tribes or among organizations serving or representing Native Hawaiians.

(c) The applicant has not performed satisfactorily under a previous Department of Education award.

(Sec. 103; 20 U.S.C. 2313)

§ 410.33 Is the Secretary's decision not to make an award under the Indian Program subject to a hearing?

After receiving notice that the Secretary will not award a grant or cooperative agreement to an eligible applicant under § 410.2(a)(1), the Indian tribal organization has 30 calendar days to request, in writing, a hearing to review the Secretary's decision.

(Sec. 103; 20 U.S.C. 2313, 25 U.S.C. 450f)

7. A new Part 411 is added to read as follows:

PART 411—DEMONSTRATION CENTERS FOR THE RETRAINING OF DISLOCATED WORKERS

Subpart A—General

Sec.

411.1 What is the Demonstration Centers for the Retraining of Dislocated Workers Program?
411.2 Who is eligible to apply for assistance under this program?
411.3 What regulations apply to this program?
411.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

411.10 What types of projects may be funded?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

411.30 How does the Secretary evaluate an application?
411.31 What selection criteria does the Secretary use?
411.32 How does the Secretary select an application for funding?

Authority: Sec. 415 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2415, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 411.1 What is the Demonstration Centers for the Retraining of Dislocated Workers Program?

(a) The Demonstration Centers for Retraining Dislocated Workers Program provides financial assistance to establish one or more demonstration centers.

(b) These centers retrain dislocated workers in order to demonstrate the application of general theories of vocational education to the specific problems of retraining displaced workers.

(Sec. 415; 20 U.S.C. 2415)

§ 411.2 Who is eligible to apply for assistance under this program?

Any public or private agency, institution, or organization is eligible to apply for a grant, contract, or cooperative agreement under this program.

(Sec. 415; 20 U.S.C. 2415)

§ 411.3 What regulations apply to this program?

The following regulations apply to the Demonstration Centers for the Retraining of Dislocated Workers Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 415; 20 U.S.C. 2415)

§ 411.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program

(Sec. 415; 20 U.S.C. 2415)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

411.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements to establish one or more demonstration centers for the purposes described in § 411.1.

(b) Each demonstration center assisted under this program may—

(1) Provide retraining programs and counseling services;

(2) Seek additional resources;

(3) Disseminate information;

(4) Coordinate its activities with various other entities providing related services and activities; and

(5) Assist in the establishment of additional centers.

(Sec. 415; 20 U.S.C. 2415; House Report No. 98-1129, 98th Cong., 2d Sess. p. 87 (1984))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 411.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 411.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 411.31.

(c) Subject to paragraph (d) of this section the maximum possible points for

each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 411.31.

(Approved by the Office of Management and Budget under OMB control No. 1830-0013)

(Sec. 415; 20 U.S.C. 2415)

§ 411.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed demonstration center.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed demonstration center, including evidence of a high concentration of dislocated workers in the area to be served;

(ii) How the need will be met; and

(iii) Ongoing and planned activities in the community pertaining to the proposed demonstration center, where appropriate.

(b) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of training.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the training to be provided.

(2) The Secretary looks for information that shows that—

(i) The training is appropriate for the trainees in light of the labor market; and

(ii) Trainees will receive appropriate counseling.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relating to the objectives of the project.

(f) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(h) *Private sector involvement.* (5 points)

(1) The secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(i) *Employment opportunities.* (5 points)

The Secretary looks for information on and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(j) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques developed by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 415; 20 U.S.C. 2415)

§ 411.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in §411.31, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Sec. 415; 20 U.S.C. 2415)

8. A new Part 412 is added to read as follows:

PART 412—COOPERATIVE DEMONSTRATION PROGRAM

Subpart A—General

Sec.

412.1 What is the Cooperative Demonstration Program?
412.2 Who is eligible to apply for an award under this program?
412.3 What regulations apply to this program?
412.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

412.10 What types of projects may be funded?
412.11 How does the Secretary establish priorities for this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

412.30 How does the Secretary evaluate an application?
412.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by a Recipient?

412.40 What cost sharing requirement is imposed under this program?

Authority: Sec. 411 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2411, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 412.1 What is the Cooperative Demonstration Program?

(a) The Cooperative Demonstration Program provides financial assistance for—

(1) Model projects providing improved access to quality vocational education programs for certain individuals;

(2) Projects that are examples of successful cooperation between the private sector and public agencies in vocational education;

(3) Projects to overcome national skill shortages; and

(4) Other activities which the Secretary may designate that are related to the purpose of the Act.

(b) Projects eligible for assistance are described in § 412.10

(Sec. 411(a); 20 U.S.C. 2411(a))

§ 412.2 Who is eligible to apply for an award under this program?

The following are eligible to apply for an award under this program:

(a) State educational agencies (SEAs).

(b) Local educational agencies (LEAs).

(c) Postsecondary educational institutions.

(d) Institutions of higher education.

(e) Other public and private agencies, organizations, and institutions.

(Sec. 411(a); 20 U.S.C. 2411(a))

§ 412.3 What regulations apply to this program?

The following regulations apply to the Cooperative Demonstration Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 411; 20 U.S.C. 2411)

§ 412.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to the Cooperative Demonstration Program.

(Sec. 411; 20 U.S.C. 2411)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 412.10 What types of projects may be funded?

(a) The Secretary may support directly or through grants, cooperative agreements, or contracts the following types of projects:

(1) Model projects providing improved access to quality vocational education programs for—

(i) Handicapped individuals;

(ii) Disadvantaged individuals;

(iii) Adults who are in need of training and retraining;

(iv) Individuals who are single parents or homemakers;

(v) Individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education;

(vi) Criminal offenders who are serving in a correctional institution; and

(vii) Men and women seeking nontraditional occupations.

(2)(i) Projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, and building trade councils) and public agencies in vocational education, including State boards and eligible recipients.

(ii) The projects described in paragraph (a)(2)(i) of this section must be designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(A) Work experience and apprenticeship projects;

(B) Transitional worksite job training for vocational education students which is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(C) Placement services in occupations which the students are preparing to enter; and

(D) Where practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas.

(iii) The projects described in paragraphs (a)(2) (i) and (ii) of this section may include institutional and on-the-job training, support services authorized by the Act, and such other necessary assistance as the Secretary determines to be necessary for the successful completion of the project.

(3) Projects to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce.

(4) Such other activities which the Secretary may designate which are related to the purposes of the Act.

(b) All projects assisted under the Cooperative Demonstration Program must be—

(1) Of direct service to the individuals enrolled; and

(2) Capable of wide replication by service providers.

(Sec. 411 (a), (b), (c); 20 U.S.C. 2411 (a), (b), (c))

§ 412.11 How does the Secretary establish priorities for this program?

(a) The Secretary may announce through one or more notices published in the **Federal Register** the priorities for this program (including any national skill shortages to be addressed) if any, from the types of projects described in § 412.10.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(Sec. 411; 20 U.S.C. 2411)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 412.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 412.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 412.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 412.31.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 411; 20 U.S.C. 2411)

§ 412.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for and the soundness of the rationale for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of the need for the proposed project;

(ii) Specific evidence of the need for the project;

(iii) A description of any ongoing and planned activities in the community relative to the need, including, if appropriate, the relationship of any local, regional or State economic development plan;

(iv) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs;

(v) A clear statement of what the project seeks to demonstrate; and

(vi) Evidence that the project is likely to serve as a model in the future.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) Private sector involvement in the planning of the project; and

(ii) Private sector involvement in the operation of the project.

(h) *Employment opportunities.* (5 points)

The Secretary looks for information and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(i) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the demonstration project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

(Approved under OMB Control No. 1830-0013)

(Sec. 411; 20 U.S.C. 2411)

Subpart E—What Conditions Must Be Met by a Recipient?

§ 412.40 What cost sharing requirement is imposed under this program?

(a) A recipient shall provide not less than 25 percent of the cost of the demonstration project it conducts under this program.

(b) In accordance with Subpart G of 34 CFR Part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Sec. 411(b)(2); 20 U.S.C. 2411(b)(2))

7. A new Part 414 is added to read as follows:

PART 414—STATE EQUIPMENT POOLS

Subpart A—General

Sec.

414.1 What is the State Equipment Pools Program?
414.2 Who is eligible to apply for assistance under this program?
414.3 What regulations apply to this program?
414.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program.

414.10 What types of projects may be funded?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

414.30 How does the Secretary evaluate an application?
414.31 What selection criteria does the Secretary use?

Authority: Sec. 413 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2413, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 414.1 What is the State Equipment Pools Program?

The State Equipment Pools Program provides financial assistance for the operation of State programs involving the loan of high-technology, state-of-the-art equipment for use in local vocational education programs.

(Sec. 413; 20 U.S.C. 2413)

§ 414.2 Who is eligible to apply for assistance under this program?

State boards are eligible to apply for grants or cooperative agreements under this program.

(Sec. 413; 20 U.S.C. 2413)

§ 414.3 What regulations apply to this program?

The following regulations apply to the State Equipment Pools Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 413; 20 U.S.C. 2413)

§ 414.4 What definitions apply to this program?

The following definitions apply to the State Equipment Pools Program:

(a) The definitions in 34 CFR 400.4.

(b) For the purposes of this part, "High technology, state-of-the-art equipment" includes, but is not limited to—

(1) Computer-controlled equipment;

(2) Electro-optic equipment;

(3) Electronic testing equipment;

(4) Scientific instrumentation;

(5) Micrographic equipment;

(6) Earth resource equipment;

(7) Telecommunications equipment; and

(8) Computers and peripherals.

(Sec. 413; 20 U.S.C. 2413)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 414.10 What types of projects may be funded?

(a) The Secretary awards grants or cooperative agreements to State boards for the operation of State programs involving the loan of high technology, state-of-the-art equipment to eligible recipients for use in local vocational education programs.

(b) The State board shall establish its own criteria for evaluating applications by eligible recipients and for the effective use of equipment, including the redistribution of equipment, if necessary.

(c) No State may receive funds for more than two consecutive years under this program.

(Sec. 413; 20 U.S.C. 2413)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 414.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an applicant on the basis of the criteria in § 414.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 414.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 414.31.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 413; 20 U.S.C. 2413)

§ 414.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (20 points)

(1) The Secretary reviews each application for information that shows the need for and the soundness of the rationale for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of the need for specific high technology, state-of-the-art equipment in local educational agencies and postsecondary educational institutions; and

(ii) Specific evidence of that need.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for informaton that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (10 points)

The Secretary reviews each application for information that shows the involvement of the private sector; including—

(1) Involvement in program planning;

(2) Involvement in program evaluation; and

(3) Other forms of support.

(h) *Cooperative relationships.* (5 points)

The Secretary reviews each application for information that shows that in preparing the application, the State board has consulted with local educational agencies and postsecondary educational institutions.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 413; 20 U.S.C. 2413)

10. A new Part 415 is added to read as follows:

PART 415—MODEL CENTERS FOR VOCATIONAL EDUCATION FOR OLDER INDIVIDUALS

Subpart A—General

Sec.

415.1 What is the Model Centers for Vocational Education for Older Individuals Program?
415.2 Who is eligible for an award under this program?
415.3 What regulations apply to this program?
415.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

415.10 What type of projects may be funded?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

415.30 How does the Secretary evaluate an application?
415.31 What selection criteria does the Secretary use?
415.32 How does the Secretary select an application for funding?

Authority: Sec. 417 of the Carl D. Perkins Vocational Educational Act, 20 U.S.C. 2417, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 415.1 What is the Model Centers for Vocational Education for Older Individuals Program?

The Model Centers for Vocational Education for Older Individuals Program (Model Centers) provides assistance to establish and operate model centers to focus greater attention on the special vocational needs of older individuals, and to promote employment opportunities for older individuals.

(Sec. 417(a); 20 U.S.C. 2419(a))

§ 415.2 Who is eligible for an award under this program?

Local educational agencies and postsecondary educational institutions are eligible for an award under this program.

(Sec. 417(b); 20 U.S.C. 2417(b))

§ 415.3 What regulations apply to this program?

The following regulations apply to the Model Centers Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 417; 20 U.S.C. 2417)

§ 415.4 What definitions apply to this program?

The following definitions apply to the Model Centers for Vocational Education For Older Individuals Program:

(a) The definitions referred to in 34 CFR 400.4.

(b) The following additional definition:

"Older Individual" means an individual fifty-five years of age or older.

(Sec. 417(d); 20 U.S.C. 2417(d))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 415.10 What types of projects may be funded?

(a) The Secretary provides assistance through grants or cooperative agreements for projects to establish and operate model centers for vocational education for older individuals.

(b) Each model center assisted by the Secretary must—

(1) Provide training or retraining to update older individuals' skills;

(2) Prepare older individuals for new careers when their skills have been rendered obsolete by technological advances;

(3) Promote employment through training or retraining in areas of job potential in growth industries utilizing new technologies;

(4) Provide assistance for later-life career changes, with special emphasis on the needs of older individuals who are displaced homemakers;

(5) Provide information, counseling, and support services to assist older individuals in obtaining employment;

(6) Encourage providers of vocational education, including community colleges and technical schools, to offer more job

training opportunities targeted to or easily accessible to older individuals; and

(7) Promote training of paraprofessionals in gerontology and geriatrics.

(Sec. 417(b); 20 U.S.C. 2417(b))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 415.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this program on the basis of the criteria in § 415.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 415.31.

(c) Subject to paragraph (d) of this section, the maximum possible points in each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 415.31.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 417; 20 U.S.C. 2417)

§ 415.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points)

(1) The Secretary reviews each application for information that shows the need for the proposed Model Center.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed model center;

(ii) Ongoing and planned activities in the community supporting the need for the proposed model center; and

(iii) The relationship of the proposed model center to any local or State economic development plan.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups.

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (5 points)

(1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and

(ii) The private sector involvement in the operation of the project.

(h) *Employment opportunities.* (5 points)

The Secretary looks for information and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(i) *Dissemination.* (10 points)

(1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description to the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques developed by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 417; 20 U.S.C. 2417)

§ 415.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 415.31, the Secretary determines whether the most highly rated applications are broadly and equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Sec. 417; 20 U.S.C. 2417)

11. A new Part 416 is added to read as follows:

PART 416—NATIONAL VOCATIONAL EDUCATION RESEARCH PROGRAM

Subpart A—General

Sec.

416.1 What are the purposes of the National Vocational Education Research Program?
416.2 Who is eligible for an award under this program?
416.3 What regulations apply to this program?
416.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

416.10 What types of projects does the Secretary fund under this program?
416.11 How does the Secretary establish priorities for this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

416.30 How does the Secretary evaluate an application?
416.31 What selection criteria does the Secretary use?
416.32 How does the Secretary select an unsolicited application for funding?

Authority: Secs. 401 and 402 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2401 and 2402, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 416.1 What are the purposes of the National Vocational Education Research Program?

The purposes of the National Vocational Education Research Program are to—

(a) Improve access to vocational educational programs for handicapped individuals, disadvantaged individuals, men and women who are entering nontraditional occupations, adults who are in need of retraining, single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Improve the competitive process by which research projects are awarded;

(c) Encourage the dissemination of findings of research projects assisted under this Act to all States; and

(d) Authorize research activities which are readily applicable to the vocational education setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education.

(Sec. 401; 20 U.S.C. 2401)

§ 416.2 Who is eligible for an award under this program?

(a) Any individual or public or private agency, organization, or institution may apply for an award under the program.

(b) Any individual researcher, community college, State advisory council, or State or local educator may submit an unsolicited research application.

(Sec. 402(a), (b)(2); 20 U.S.C. 2402(a), (b)(2))

§ 416.3 What regulations apply to this program?

The following regulations apply to the National Vocational Education Research Program:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Secs. 401, 402; 20 U.S.C. 2401, 2402)

§ 416.4 What definitions apply to this program?

The definitions in 34 CFR 400.4 apply to this program.

(Secs. 401, 402; 20 U.S.C. 2401, 2402)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 416.10 What types of projects does the Secretary fund under this program?

The Secretary directly, or through grants, cooperative agreements, or contracts, funds projects of applied research on aspects of vocational education that are specifically related to the Act, including applied research on—

(a) Effective methods for providing quality vocational education to handicapped individuals, disadvantaged individuals, men and women who are entering nontraditional fields, adults who are in need of training and retraining, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their effectiveness;

(c) Strategies for improving working training and retraining;

(d) The constructive involvement of the private sector in public vocational education;

(e) Successful methods of reinforcing and enhancing basic academic skills in vocational settings;

(f) The development of curriculum materials and instructional methods relating to new and emerging technologies, and assessments of the nature of change in the workplace and its effect on individual jobs;

(g) The identification of institutional characteristics which improve the preparation of youth and adults for employment;

(h) The development of effective methods for providing quality vocational education to individuals with limited English proficiency, including research related to bilingual vocational training; and

(i) Any other aspect of vocational education that is specifically related to the Act.

(Sec. 402(a); 20 U.S.C. 2402(a))

§ 416.11 How does the Secretary establish priorities for this program?

(a) The Secretary may announce, through one or more notices published in the **Federal Register**, the priorities for this program, from the topics described in § 416.10.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(c) The Secretary may announce in the **Federal Register** the amount of funds reserved for unsolicited research applications under this program.

(Sec. 402; 20 U.S.C. 2402)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 416.30 How does the Secretary evaluate an application?

(a) (1) The Secretary evaluates an application for a grant or cooperative agreement submitted in response to an application notice in the **Federal**

Register on the basis of the criteria in § 416.31.

(2) The Secretary may award up to 100 points including a reserved 15 points to be distributed in accordance with paragraph (a)(4) of this section, based on criteria in § 416.31 of this part.

(3) Subject to paragraph (a)(4) of this section, the maximum possible points for each criterion is indicated in parentheses after its heading.

(4) For each competition, as announced through an application notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 416.31 of this part.

(b) (1) The Secretary evaluates an unsolicited research application for a grant or cooperative agreement on the basis of the following criteria:

(i) The extent to which the aspect of applied research proposed is specifically related to the purposes of the Act.

(ii) The extent to which the project addresses an important national need.

(iii) The overall quality of the project, including, as appropriate, the quality of its design and management plan, the quality of key personnel, the adequacy of the applicant's resources, and the cost-effectiveness of the project.

(iv) The likelihood that the project will make an important contribution to vocational education.

(2) The criteria in paragraph (b)(1) of this section are not subject to 34 CFR 75.201(a).

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 402; 20 U.S.C. 2402)

§ 416.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate each application submitted in response to an application notice:

(a) *National need.* (20 Points)

(1) The Secretary reviews each application to what extent it addresses a national need in vocational education.

(2) The Secretary looks for information that shows the extent to which the project would make a contribution of national significance, as measured by factors such as—

(i) The need for the project in relation to any program priority announced in the **Federal Register**; and

(ii) The likelihood that the project will make an important contribution to vocational education.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of Key personnel.* (15 Points)

(1) The Secretary reviews each application for information that shows the qualification of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and cost effectiveness.* (10 Points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference—See EDGAR 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 Points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Dissemination plan.* (5 Points)

(1) The Secretary reviews each application for information that shows the quality of the dissemination plan for the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(ii) A clear description of the project outcomes; and

(iii) A detailed description of how information and materials will be disseminated.

(h) *Postsecondary institutions.* (5 Points).

The Secretary gives preference to applications submitted by public and private postsecondary institutions.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 402; 20 U.S.C. 2402)

§ 416.32 How does the Secretary select an unsolicited application for funding?

(a) After evaluating an unsolicited research application on the basis of the criteria in § 416.30(b), the Secretary compares that application to any other unsolicited application the Secretary has received. If unsolicited applications are determined to be of equal quality, the Secretary gives a preference to one submitted by a public or private postsecondary institution.

(b) The Secretary may fund an unsolicited research application at any time during the fiscal year.

(Sec. 402; 20 U.S.C. 2402)

12. A new Part 417 is added to read as follows:

PART 417—NATIONAL CENTER FOR RESEARCH IN VOCATIONAL EDUCATION

Subpart A—General

Sec.

417.1 What is the National Center for Research in Vocational Education?
417.2 Who is eligible to apply to be the National Center?
417.3 What regulations apply to the National Center?
417.4 What definitions apply to the National Center?

Subpart B—What Kinds of Activities Does the Secretary Support at the National Center?

417.10 What kinds of activities does the National Center carry out?

Subpart C—How Does One Apply to be the National Center?

417.20 What must an application include?

Subpart D—How Does the Secretary Designate the National Center?

417.30 How does the Secretary evaluate an application?
417.31 What selection criteria does the Secretary use?

Subpart E—What Conditions Must Be Met by the National Center?

417.40 Must the National Center have a Director?
417.41 What reports must the National Center submit to the Secretary?
417.42 What activities must be performed during the fifth year of funding?

Authority: Sec. 404 of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2404, as enacted by Pub. L. 98-524, unless otherwise noted.

Subpart A—General

§ 417.1 What is the National Center for Research in Vocational Education?

(a) The Secretary supports the operations of the National Center for Research in Vocational Education ("National Center") established by section 404 of the Act and designated by the Secretary once every five years.

(b) In designating the National Center, the Secretary acts with the advice of a panel composed of individuals appointed by the Secretary who are not Federal employees and who are recognized nationally as experts in vocational education administration and research.

(Sec. 404; 20 U.S.C. 2402)

§ 417.2 Who is eligible to apply to be the National Center?

A nonprofit entity associated with a public or private nonprofit university which is prepared to make a substantial financial contribution towards the establishment of the National Center is eligible to be designated as the National Center.

(Sec. 404; 20 U.S.C. 2404)

§ 417.3 What regulations apply to the National Center?

The following regulations apply to the National Center:

(a) The regulations in 34 CFR Part 400.

(b) The regulations in this part.

(Sec. 404; 20 U.S.C. 2404)

§ 417.4 What definitions apply to the National Center?

The definitions in 34 CFR 400.4 apply to the National Center.

(Sec. 404; 20 U.S.C. 2404)

Subpart B—What Kinds of Activities Does the Secretary Support at the National Center?

§ 417.10 What kinds of activities does the National Center carry out?

(a) (1) The primary purpose of the National Center are to design and conduct research and development projects that are consistent with the purposes of the Act, including—

(i) Longitudinal studies which extend over a period of years; and

(ii) Supplementary and short term activities.

(2) The National Center may conduct its research and development projects and activities directly, or through contracts with other public agencies and public or private institutions of higher education.

(b) The National Center shall—

(1) Conduct applied research and development on—

(i) Effective methods for providing quality vocational education to handicapped individuals, disadvantaged individuals, men and women in nontraditional fields, adults, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(ii) The constructive involvement of the private sector in public vocational education;

(iii) Successful methods of reinforcing and enhancing basic academic skills in vocational settings;

(iv) The development of curriculum materials and instructional methods relating to new and emerging technologies;

(v) Assessments of the nature of change in the workplace and its effect on individual jobs; and

(vi) The identification of institutional characteristics which improve the preparation of youth and adults for employment;

(2) Provide leadership development through an advanced study center;

(3) Provide in-service education activities for State and local leaders in vocational education;

(4) Disseminate the results of the research and development projects funded by the Center;

(5) Develop and provide information to facilitate national planning and policy development in vocational education;

(6) Provide technical assistance to programs serving special populations, including handicapped individuals and individuals with limited English proficiency;

(7) Act as a clearinghouse for information on contracts or grants made by the States to carry out research, curriculum, and personnel development activities and on contracts or grants made by the Secretary under Title IV of the Act. The National Center shall make available to the States, in a reasonable manner, abstracts on research, curriculum development, and personnel development projects;

(8) Work with States, local educational agencies, and other public agencies in developing methods of planning and evaluating programs, including follow-up studies of program completers, so that public agencies can offer vocational education programs which are more closely related to the types of jobs available in their communities, States, and regions; and

(9) After consultation with the National Commission for Employment Policy, report annually to the Congress, the Secretary, and the Secretary of Labor on the extent, efficiency, and effectiveness of joint planning and coordination under the Act and the Job Training Partnership Act.

(c) The Secretary awards a grant annually for the operation of the National Center.

(Sec. 404; 20 U.S.C. 2404)

Subpart C—How Does One Apply to be the National Center?

§ 417.20 What must an application include?

An application must describe the financial contribution the public or private nonprofit university will make towards the establishment of the National Center.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)
(Sec. 404; 20 U.S.C. 2404)

Subpart D—How Does the Secretary Designate the National Center?

§ 417.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 417.31.

(b) The Secretary may award up to 100 points based on the criteria in § 417.31.

(c) The maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(Sec. 404; 20 U.S.C. 2404)

§ 417.31 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Required functions.* (40 points)

The Secretary reviews each application for information that shows that each of the required services and activities the applicant will conduct under § 417.10(b) will be of high quality and effective.

(b) *Management.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the management plan.

(2) The Secretary looks for information that shows—

(i) The applicant's philosophy of management for the National Center;

(ii) How the applicant will implement that philosophy of management in organizing the National Center, particularly with regard to the public or private nonprofit university with which it is associated;

(iii) The applicant's plan for managing the National Center's activities and personnel, including quality control procedures for its activities and products and procedures for monitoring compliance with timeliness; and

(iv) Adequate budgeting, accounting, and recordkeeping procedures.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use for the National Center.

(2) The Secretary looks for information that shows—

(i) The qualifications of the Director;

(ii) The qualifications of each of the other key personnel to be used for the National Center;

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the National Center, as well as other information that the applicant provides.

(d) *Vocational education experience.* (10 points)

(1) The Secretary reviews each application for information that shows the institutional experience of the applicant.

(2) The Secretary looks for information that shows—

(i) The applicant's experience in conducting applied research and development activities in the field of vocational education of the type described in the Act; and

(ii) The applicant's capacity for conducting applied research and development activities in the field of vocational education of the type described in the Act.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the National Center will have an adequate budget and will be cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the National Center is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(g) *External relations.* (5 points)

(1) The Secretary reviews each application for information that shows that the National Center will have cooperative productive relationships with interested and affected entities.

(2) The Secretary looks for information that explains the National Center's future relationship to—

(i) The National Commission for Employment Policy;

(ii) The advisory committee established under section 404(c) of the Act; and

(iii) Personnel at the State and local level who are working to improve vocational education programs, materials and curricula.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)
(Sec. 404; 20 U.S.C. 2404)

Subpart E—What Conditions Must be Met by the National Center?

§ 417.40 Must the National Center have a Director?

The National Center shall have a Director who is appointed by the university associated with the National Center and is assisted by the advisory committee established under section 404(c) of the Act.

(Sec. 404(a)(3); 20 U.S.C. 2404(a)(3))

§ 417.41 What reports must the National Center submit to the Secretary?

(a) The National Center shall submit the following to the Secretary:

(1) Minutes of each meeting of the advisory committee established under section 404(c) of the Act, within 30 days after each meeting.

(2) Quarterly performance reports which described the progress, problems, and future plans for each significant activity of the National Center, within 30 days of the end of each quarter.

(3) Quarterly financial status reports (Standard Form 269), within 30 days of the end of each quarter.

(4) Monthly exception reports which describe—

(i) Any problems, delays, or adverse conditions which materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(ii) Any favorable developments which will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(5) Ten copies of all substantive reports and products produced under the grant.

(6) An annual performance report which summarizes the accomplishments of each significant activity of the National Center during that grant year, within 90 days of the end of the grant year. (The annual performance report may be submitted in place of the

quarterly financial status reports under paragraph (a)(3) of this section for the fourth quarter of each year.)

(7) A final performance report which summarizes the accomplishments of each significant activity of the National Center during the five year award cycle, within 90 days of the end of that cycle.

(b) The annual reporting requirement in 34 CFR 75.720(b) does not apply to this part.

(Sec. 404; 20 U.S.C. 2404)

§ 417.42 What activities must be performed during the fifth year of funding?

During the fifth year of the award cycle, the National Center shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services, and activities to a successor during the twelfth month of that year.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

(Sec. 404; 20 U.S.C. 2404)

Note.—This appendix is to be published in the **Federal Register** with the final regulations but is not to be codified in the Code of Federal Regulations.

Appendix A—Summary of Comments and Responses

The following is a summary of the comments received on the notice of proposed rulemaking for the State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education published on January 25, 1985. Each comment is followed by a response that indicates why a change has been made or why no change is considered necessary. Specific comments are arranged in order of the sections of the final regulations to which they pertain.

Part 400—Vocational Education Programs—General Provisions

Section 400.4(b) Definitions.

Comment. Several commenters recommended that their particular organizations be added to the list of examples included in the definition of a "community-based organization" in § 400.4(b).

Response. No change has been made. As § 400.4(b) states, the list of organizations is merely illustrative. Further, as directed by the Act, this definition is taken directly from Section 4(5) of the Job Training Partnership Act.

Comment. Several commenters suggested changing the definition of "community-based organization" (CBO) to also include reservation Indians and tribal organizations.

Response. No change has been made. The definition of "CBO" is taken from Section 4(5) of the Job Training Partnership Act (P.L. 97-300) as required by the Act, and includes tribal governments and Native Alaskan groups.

Comment. One commenter recommended that § 400.4(b) be changed by striking the phrase "of demonstrated effectiveness" from the definition of "community-based organization".

Response. No change has been made. The Congress included the phrase "of demonstrated effectiveness" in the definition of community-based organization.

Comment. One commenter wanted to modify the definition of "cooperative education" by changing the word "jobs" to "paid employment."

Response. No change has been made. The definition is taken directly from section 521(7) of the Act. The term "jobs" has traditionally been interpreted to mean paid employment.

Comment. One commenter maintained that the definition of "criminal offender" in § 400.4(b) was probably unconstitutional and should be modified. At present, the term is defined as "any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender." The commenter noted that the American system of justice presumes the innocence of the person charged with a crime, until actually convicted. The commenter asked that the "or" before "convicted" be changed to "and."

Response. No change has been made. The statutory and regulatory definition does not confer criminal status, but merely identifies persons eligible to participate in the program. In addition, the suggested change could work to the disadvantage of a person who is charged with a crime and incarcerated pending trial. The current definition would allow such an individual to share in the benefits of this vocational education program.

Comment. Several commenters noted that the proposed regulations did not include definitions of "dependent care, day care, or child care services," and recommended that definitions be added.

Response. No change has been made. The Secretary believes States should have the discretion to define the terms, consistent with the purposes of the Act.

Comment. Several commenters recommended that § 400.4(b) include a definition of "demonstrated effectiveness" to be used in evaluating the eligibility of community-based organizations.

Response. No change has been made. Since the ability to demonstrate effectiveness is subject to a variety of local needs and conditions, it has been left to the judgment of the States to determine if community-based organizations meet the condition of "demonstrated effectiveness." Item 45 of the Conference Report provides guidance for States to use in making such determinations:

"When deciding which institutions can deliver services in a cost effective manner, consideration should be given to expenses, such as the depreciation or rental cost of buildings and administrative expenses for all institutions so that comparisons on the ability to provide services on a competitive basis is an equitable one." House Report No. 98-1129, 98th Cong. 2d Sess. p. 70.

Comment. Several commenters asked that the definition of "disadvantaged" be changed to specifically address students in a postsecondary institution. The commenters recommended special definitions, including the following:

(a) A new enrollee from a secondary educational agency whose basic academic or overall grade point average is below 2.0 or who fails to attain minimal academic competencies as established by the local educational agency.

(b) Grade point average of less than 2.0 on a 4.0 scale in those courses designated for the occupational training program during the current and/or immediately previous enrollment periods in a postsecondary institution.

(c) Students with a record of repeated withdrawal from approved postsecondary courses.

(d) Secondary educational program dropout without a high school diploma or G.E.D.

Response. No change has been made. The criteria in the definition of "disadvantaged" are sufficiently broad that States may adjust the criteria to apply to either secondary or postsecondary settings.

Comment. Several commenters objected to the definition of "disadvantaged" as it applies to academically disadvantagement as being too restrictive. Some commenters felt that the "25th percentile" rule should be changed to the "40th percentile" so as to agree with practice under Chapter I. Others recommended a change to the 50th percentile. Still other commenters suggested that the definition not be changed.

Response. No change has been made. The language of the regulation is based on the intent of Congress as expressed in Item 246 of the Conference Report. While it is true that many local

educational agencies use the 40th percentile as an eligibility cut-off under Chapter I, many other local educational agencies do not. Finally, the Chapter I program is unlike the State basic grant program under the Act in several respects. For example, unlike Chapter I, under the State basic grant, the percentile selected would directly affect the allocation of funds to local educational agencies and the eligibility of students to participate in programs. Several other points should be noted—

(1) A State must use one or more of the three criteria contained in the definition;

(2) In the case of the standardized achievement or aptitude ranking, the State may use some cut-off point that is at or below the 25th percentile but not one which is greater than the 25th percentile;

(3) In the case of the grade-point average, the State may use some cut-off point that is less than 2.0, but not one that is 2.0 or higher; and

(4) Individuals who have limited English proficiency, as well as those who are dropouts from, or identified as potential dropouts from, secondary school are automatically defined as "academically disadvantaged," regardless of how they may score on the measures described under items (2) and (3) above.

Comment. One commenter pointed out that Item 246 of the Conference Report (in addressing the definition of "academically disadvantaged") calls for latitude in the application of these standards, allowing the State ". . . to select from among these standards, depending on the best means for determining this measure for their respective State." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 100). The commenter asked if including the Report language in the regulations would serve to make congressional intent clear on this matter.

Response. No change has been made. The definition of "academically disadvantaged" does permit States to select from the standards promulgated to define this term.

Comment. Several commenters recommended that the Secretary prescribe additional criteria to be used in defining an "economically depressed area," such as a heavy concentration of Chapter 1 students or a heavy concentration of students receiving free and reduced-priced lunches.

Response. No change has been made. The Secretary does not believe that additional, and possibly restrictive, criteria are warranted at this time. As these and other criteria are proposed by States in their State plans, they will be evaluated by the Secretary on a case-by-case basis as defining an "economically depressed area." However, the Secretary believes the two criteria used as examples above may be appropriate in some instances.

Comment. Several commenters asked if the definition of "economically depressed area" should preclude the possibility that the entire State itself, rather than just areas within the State, be considered an economically depressed area.

Response. No change has been made. Section 521(13) of the Act defines "economically depressed area" as an area "within the State." The focus of section 113(b)(5) of the Act is not whether an entire State might be economically depressed in comparison with other States, but rather, which eligible recipients within the State need more funds to operate programs effectively, compared to less needy eligible receipients within the same State.

Comment. One commenter suggested eliminating three of the five standards in § 400.4(b) for judging economic disadvantagement in the definition of "economically disadvantaged family or individual," on the basis of possible non-availability of data.

Response. No change has been made. The definition of "economically disadvantaged family or individual" permits a State to choose from the five possible standards in judging economic disadvantagement. A State should consider the lack of data in determining which of the five standards it will use to judge economic disadvantagement.

Comment. One commenter inquired as to the statutory authority for the definition of "economically disadvantaged family or individual" in § 400.4(b) of the regulations, pointing out that section 521(20) of the Act seems to require the Secretary to determine such families or individuals on the basis of low-income "according to the latest available data from the Department of Commerce." The definition in § 400.4(b) permits a State to select one or more of the standards of low income prescribed by the Secretary that it will apply for the purposes of its State program. However, not all of these standards are based on Department of Commerce data.

Response. No change has been made. The Secretary believes the definition in § 400.4(b) is consistent with the intent of Congress. The definition of "economically disadvantaged family or individual" in section 521(20) of the Act is substantially similar to the definition of "low income family or individual" in the Vocational Education Act (VEA) of 1963. Under the VEA, the term was used in connection with the identification of areas with large concentrations of such families or individuals (not the identification of families or individuals themselves) for the purposes of fund distribution. The Department's well-established administrative practice under the VEA definition of "low income family or individual" was to permit the use of substitute data, such as Aid to Families with Dependent Children data and data on school lunch program recipients, where Department of Commerce data either did not exist or for some other reason could not be meaningfully applied. Thus, the definition of "economically disadvantaged family or individual" under the Act continues this history of administrative flexibility.

The statutory term "economically disadvantaged family or individual" has its principal application in the statutory allocation formulas for basic State grant funds reserved for handicapped individuals and disadvantaged individuals. Under section 203 of the Act those funds are allotted among eligible recipients partly on the basis of actual enrollments of economically disadvantaged individuals. The use of economically disadvantaged enrollments to allocate funds reserved for handicapped and disadvantaged individuals was a feature of the Senate bill that was adopted in conference. With respect to the intended meaning of the term "economically disadvantaged family or individual" for this purpose, the Senate Report acknowledged the need for administrative flexibility and sanctioned the State practice of using existing student counts, such as eligibility for free or reduced-price school lunches or Pell Grant recipients (Senate Report No. 98–507, 98th Cong. 2nd Sess. at 16). Thus, the definition in § 400.4(b) is consistent with this important aspect of the legislative history of the Carl D. Perkins Act.

Finally there is the question of administrative feasibility. While it would be possible for the Secretary to establish inflexible qualifying income levels that are based on Department of Commerce data for families and students at the secondary and postsecondary levels, every participating local educational agency or postsecondary educational institution would have to canvass their enrollments every year to identify students at or below the prescribed income level for the purpose of fund allocation. Clearly, this would be a substantial administrative burden upon eligible recipients, one that might discourage their participation in the program, and

an intrusive practice with respect to intended program beneficiaries. There is no legislative history which suggests Congress intended to impose such burdens on eligible recipients, students, or their families. Moreover, these potential difficulties, as well as the risk of Federal intrusiveness, are eliminated by permitting the States and eligible recipients to utilize, on a uniform basis, the income data that is already available to them.

Comment. One commenter suggested that however a State chooses to define an "economically disadvantaged family or individual," such criterion or criteria should be applied consistently throughout the State.

Response. No change has been made. The phrase "on the basis of uniform methods," in the definition, indicates that a State must use the same measures to identify low income families or individuals served by eligible receipients.

Comment. A commenter pointed out that § 400.4(b), in listing the options from which a State might choose in developing its own definition of the term "economically disadvantaged family or individual," mixes both receipt of benefits with eligibility to receive benefits. The commenter asked that this be clarified.

Response. No change has been made. The criterion involving the Pell Grants continues to refer to a person's receipt of a Pell Grant or comparable State program of need-based financial assistance. Eligibility determinations under such programs can be complex and time-consuming. It is unlikely that State or local officials administering programs under the Act could make such determinations in the abstract.

Comment. Several commenters suggested that the definition of "eligible recipient" be changed to include community-based organizations for the purposes of the Act except when they are prohibited from being eligible recipients by specific language in the regulations.

Response. No change has been made. Community-based organizations are not included in the statutory definition of eligible recipient. Although community-based organizations are eligible to receive funds directly from the State under § 401.55(c), they do not become eligible recipients, as defined in § 400.4, when such an award is made.

Comment. One commenter expressed the view that State-recognized consortia of high school be recognized as eligible recipients under the Act.

Response. No change has been made. If such consortia constitute local educational agencies, as defined in the Act, they are eligible recipients under the Act.

Comment. A number of commenters recommended that the definition of "handicapped" in § 400.4(b) be modified because they were under the impression that persons with multiple handicaps are excluded from the definition.

Response. A change has been made. The definition of "handicapped" in § 400.4(b) now includes "deaf-blind" and "multi-handicapped," and is now substantially the same as the definition of "handicapped children" in 34 CFR 300.5(a) applicable to Part B of the Education of the Handicapped Act, as amended.

Comment. Several commenters were concerned that the definition of "handicapped" in § 400.4(b) referred to "special education assistance" rather than to "special educational assistance."

Response. No change has been made. Section 521(15) of the Act, as did section 195(7) of the Vocational Education Act, refers to students who cannot succeed in regular vocational education programs without "special education assistance." The Secretary believes that the principal purpose of the statutory and regulatory definition is to identify the individuals who are eligible to be served with funds reserved for the handicapped under Title II of the Act and not to govern the types of supplementary or additional services that are provided or the administrative responsibilities for such services at the State level.

Comment. One commenter questioned why the definition of "handicapped" refers to "speech or language impaired" when the statute uses the term "speech impaired" only.

Response. No change has been made. The term "language impaired" was added to make the definition of "handicapped" consistent with the definition of the term in the Education of the Handicapped Act. Item 248 of the Conference Report shows that Congress intended the definitions to be consistent. House Report No. 98–1129, 98th Cong. 2d Sess. p. 100.

Comment. One commenter recommended that the definition of "handicapped" be extended to include language from Item 248 of the Conference Report which says:

"It is the managers' intent that handicapped individuals in secondary institutions fall under the definition of handicapped individual contained in the Education of the Handicapped Act, and therefore are enrolled in special education and have an individualized education program. Handicapped individuals enrolled in postsecondary institutions, who fall under the definition contained in section 521 of this Act, need not meet the criteria of being enrolled in special education."

Response. No change has been made. The Secretary interprets the language of the Conference Report to mean that to be eligible for services supported by funds reserved for handicapped individuals under Title II of the Act, handicapped individuals who are enrolled in postsecondary institutions need not have an individualized education program or be enrolled in a special education program. However, the Secretary does not believe it is necessary to include additional regulatory language in the definition.

Comment. One commenter wanted the definition of "limited English proficiency" expanded to include Hawaiian students.

Response. No change has been made. The definition is taken directly from section 521(18) of the Act which incorporates the definition in section 703(a)(1) of the Elementary and Secondary Education Act. The definition does cover Hawaiian students whose native language is a language other than English or who have sufficient difficulty speaking, reading, writing, or understanding the English language.

Comment. One commenter suggested that the definition of "local educational agency" be broadened to specifically include elementary or secondary schools on Indian Reservations operated directly by the Bureau of Indian Affairs or community controlled schools funded by the Bureau of Indian Affairs through contracts under the Indian Self-Determination Act.

Response. No change has been made. The definition of local educational agency is statutory.

Comment. One commenter noted that section 521(22) of the Act (definition of private vocational training institutions) requires the Secretary to publish a list of nationally recognized accrediting agencies or associations and State agencies which the Secretary determines to be reliable authority as to the quality of education or training afforded. The commenter asked if such a list has been published.

Response. No change has been made. The Secretary has published such a list which is entitled *Nationally Recognized Accrediting Agencies and Associations.*

Comment. One commenter suggested revisions to the definition of "vocational student organizations" to allow students who have been enrolled, but are not currently enrolled in vocational education programs, to continue to participate in the vocational student organization in keeping with the

organization's charter, by-laws, and constitution.

Response. No change has been made. The definition is statutory.

Comment. One commenter was pleased that the regulations did not define the terms "work-study," "work experience," and "work-site learning." Other commenters recommended that the term "marketable skills" in § 401.55(a) be defined.

Response. No change has been made. Since the Act does not define the terms, the Secretary believes the States should have the discretion to define the terms, consistent with the purposes of the Act.

Comment. Several commenters suggested adding language which would define occupationally specific program areas. For instance, commenters suggested definitions for modern agricultural arts and industrial arts.

Response. No change has been made. Adding a definition for each occupationally specific program area could prove unduly restrictive. Determinations about occupational program-specific definitions are appropriately left to the States.

Part 400—General

Comment. Several commenters asked that section 3(a) of Pub. L. 98–524 (Transition Provisions) be administratively interpreted to allow States flexibility in program administration for program year 1985–86. Other commenters felt that section 3(a)(2) of Pub. L. 98–524 provides a legal basis for States to phase in the application of the additional or supplemental cost requirement as it applies to separate programs for handicapped and disadvantaged students under Part A of Title II of the Act. Other commenters recommended that the regulations include a transition period in order to provide for the phasing in of the "non-maintenance" requirement for certain programs authorized by Title II, Part B of the Act.

Response. No change has been made. The Secretary recognizes the flexibility afforded States during the period of transition under section 3(a)(2) of Pub. L. 98–524, but believes that detailed and, possibly restrictive, regulations are not warranted. The Secretary believes the transition authority is best implemented on a case-by-case basis. Additional guidance regarding the use of the carryover funds and current year funds under section 3(a) of Pub. L. 98–524 is contained in Appendix B.

Comment. One commenter suggested that the regulations should require parental consultation in the design and implementation of programs, as authorized by section 427 of the General Education Provisions Act and should set forth criteria designed to encourage such participation.

Response. No change has been made. While the Secretary has authority to promulgate regulations designed to encourage parental participation in the administration of programs, and encourage State and local program administrators to do so whenever appropriate, the Secretary does not believe such regulations are warranted at the present time. The Secretary believes that these regulations provide adequate opportunities for parental involvement. For example, § 401.18(b) requires States to hold public hearings on the State plan during its development so that intended organizations and groups have an opportunity to present their views and make recommendations. In addition, at the local level, § 401.41(c) requires eligible recipients to make their local applications available for review and comment by all interested parties. The Secretary wishes to avoid unnecessarily detailed and inflexible requirements regarding parental participation. However, should these regulations not result in appropriate involvement by parents, the Secretary will consider additional, more prescriptive requirements.

Part 401—State Vocational Education Program

Section 401.11 State board responsibilities.

Comment. One commenter felt that § 401.11(b) should be changed to make it clear that the State Board for Vocational Education is the "ultimate authority in the development and evaluation of the State's program of vocational education."

Response. No change has been made. Section 401.11 of the regulations reflects the language of the Act and lists the non-delegable responsibilities of the State board which include program development and evaluation. Furthermore, § 401.10 stipulates that the "State Board of Vocational Education" shall be the "sole State agency responsible for the administration or the supervision of the State's vocational education program."

Comment. Several commenters proposed that § 401.11(f) include more guidance to State boards on matters such as what constitutes "necessary" procedures to implement State-level coordination with the State job training coordinating council under JTPA.

Response. No change has been made. The Secretary does not believe additional regulations are warranted. Each State has its own unique needs and conditions which affect such procedures. The States are free to develop their own methods of coordination which are most appropriate to their respective circumstances.

Comment. One commenter suggested that the State board should, among its other principal responsibilities, be given the task of monitoring the compliance of eligible recipients and other with civil rights laws.

Response. No change has been made. The non-delegable responsibilities of the State board are established by section 111(a)(1) of the Act. However, neither the Act nor the regulations prohibit the State board from carrying out additional related responsibilities.

Section 401.12 Additional responsibilities of the State board.

Comment. One commenter recommended a modification to § 401.12(a) which requires the State board to provide private industry councils formed under section 102 of JTPA with a listing of all programs assisted under the Act. The requested modification involved the timing of this requirement and the need for this listing to be repeated on a regular basis. Another commenter suggested that the regulations provide guidance on how the list of programs should be structured.

Response. A change has been made. Congress intended that vocational education programs be closely coordinated with training and retraining programs under other Federal statutes such as the JTPA. Therefore, § 401.12(a) now clarifies that the listing of programs under the Act given to private industry councils be kept current so that those councils have an up-to-date understanding of the programs assisted under the Act. This would require States, for example, to update the program listing whenever State plans are approved or when other significant funding decisions are made. The Secretary does not believe that more detailed, prescriptive requirements regarding program lists are warranted.

Comment. One commenter suggested replacing the requirement in § 401.12(b)(3)(ii) that support for technical committees come from the State's portion of the basic State grant allotment (no more than 20% of the total allotment) with ". . . a State *may* consider funds used to support technical committees as part of the State's portion." The commenter suggested that the change would allow States to delegate responsibility for technical committees to eligible recipients with expertise in curriculum development.

thereby avoiding using funds for State administration.

Response. No change has been made. Section 111(d) of the Act clearly imposes the requirement to establish technical committees upon State boards. As such, support funds must be counted against the maximum of 20 percent of the allotment allowed for State activities.

Comment. One commenter asked why § 401.12(b)(1) of the regulations requires States to establish "at least two technical committees" while section 111(d) of the Act uses the phrase "a limited number of technical committees." The commenter also asked why a number was specified, and suggested the number be left up to the States.

Response. No change has been made. Section 111(d) of the Act clearly requires that more than one technical committee be established. To clarify this requirement, the Secretary specified the least restrictive definition of this requirement which is "at least two technical committees." Apart from this interpretation of the Act, the States are free to establish whatever number of committees they deem appropriate.

Comment. Several commenters wanted a provision added to § 401.12 that would require the State board to ensure that all funds spent under the authority of § 401.13(a), including expenditures for the sex equity program and the program for single parents and homemakers, would be spent in a manner consistent with the requirements of the Act. The commenters also wanted language added to § 401.12 that would require the State board to establish an oversight and monitoring system to implement this requirement.

Response. No change has been made. No additional regulatory requirements are necessary. The State plan contains assurances that the State board will comply with all the requirements of Titles, I, II, III, and V of the Act, including those identified by the commenters, as well as a description of the planned uses of Federal funds. A separate administrative monitoring system, in addition to whatever administrative management system the State establishes to ensure compliance with the Act, would be burdensome and unnecessary.

Section 401.13 Duties of the sex equity coordinator.

Comment. Several commenters requested that § 401.13 include a more specific explanation of the role and responsibilities of the sex equity coordinator.

Response. No change has been made. The Secretary believes that the statute and these regulations provide sufficient guidance, and that additional regulations, which might inappropriately limit State flexibility, are not warranted. Section 111(b)(1) of the Act and § 401.13(a) of the regulations require the State to "assign one individual within the appropriate agency established or designated by the State board . . . to administer vocational education programs within the State, to work full time to assist the State board" to carry out a variety of activities intended to eliminate sex discrimination and sex stereotyping in vocational education programs. In addition, this full time individual must administer the program for single parents and homemakers and the sex equity program authorized by Title II of the Act. The Secretary believes that Congress intended the States to have considerable latitude in defining the exact organizational placement and responsibilities of this individual with respect to the performance of his or her mandated duties, and these regulations reflect that intended latitude.

Comment. One commenter requested clarification on the time frame for carrying out activities listed in § 401.13(a). The commenter particularly wanted to know whether the activities are required on an annual basis.

Response. No change has been made. The activities listed in § 401.13(a) are part of a State's continuing administrative activities, as set forth in its State plan. Thus, the activities must be performed during the period covered by the State plan.

Comment. One commenter recommended § 401.13(a)(1) be revised to permit the State to determine the individual who should administer the single parents and homemakers program.

Response. No change has been made. Section 111(b)(1)(A) of the Act specifically requires that the "sex equity coordinator" administer the single parents and homemakers program.

Comment. Several commenters suggested adding a requirement that the "sex equity coordinator" be responsible for supervising staff hired to assist in monitoring, oversight, and disbursement of funds for programs serving single parents and homemakers and those designed to eliminate sex bias and stereotyping.

Response. No change has been made. While section 111(b) of the Act refers to the "sex equity coordinator" as being assigned "within the appropriate agency established or designated by the State board . . . to administer vocational education programs," the Secretary does not believe that regulations dealing with such details as supervisory responsibilities are warranted. However, under the Act, the sex equity coordinator remains responsible for administering the sex equity program and the program for single parents and homemakers under Title II of the Act.

Comment. Several commenters suggested requiring the State board to ensure that funds for programs administered by the "sex equity coordinator" be used for the purposes and in the manner described in § 401.13(a) (1) through (8), which describes personnel requirements regarding the elimination of sex discrimination and sex stereotyping.

Response. No change has been made. The "sex equity coordinator" administers the programs within the State that serve single parents and homemakers and the programs designed to eliminate sex bias and stereotyping under sections 201 (f) and (g) of the Act, respectively. The uses of funds for these two programs are described in §§ 401.55 and 401.56 of the regulations. The suggested change would be inconsistent with the Act because the activities described in § 401.13(a) (1) through (8) are to be supported by the minimum $60,000 reserved under § 401.13(b).

Comment. Several commenters suggested adding a new paragraph to § 401.13 which would give the "sex equity coordinator," at the discretion of the State board, authority to administer all funds for vocational education programs serving single parents and homemakers and programs designed to eliminate sex bias and stereotyping under any provision of the Act where women are served, including Consumer and Homemaking and Industry-Education Partnership Programs under Title III of the Act.

Response. No change has been made. The regulations reflect the intent of Congress that the "sex equity coordinator" administer the programs described in sections 201 (f) and (g) of the Act which serve single parents and homemakers and those designed to eliminate sex bias and stereotyping as well as work full time to assist the State board to eliminate sex bias and stereotyping in vocational education. To the extent that additional programmatic requirements are fully consistent with these statutory requirements, these regulations do not preclude them. For example, § 401.103(b) authorizes the sex equity coordinator to administer programs under Title III, Part C for single parents or homemakers.

Comment. One commenter asked why § 401.13(b) requires the $60,000 minimum for eliminating sex discrimination and sex stereotyping to be reserved in a program year rather than a fiscal year. The commenter also asked the rationale for adding the phrase "including the provision of necessary and reasonable staff support."

Response. No change has been made. The substitution of "program year" for "fiscal year" in the proposed regulations was made to make funding, program, and reporting cycles consistent throughout the regulations. However, the reference to program year in the final regulations has been removed because it is not needed to explain that at least $60,000 must be reserved for the activities of the "sex equity coordinator" from each basic State grant allotment. The phrase "including the provision of necessary and reasonable staff support" was added in order to make clear that funds reserved for the "sex equity coordinator" may be used for his or her support staff.

Section 401.14 State council—establishment.

Comment. One commenter reasoned that, since the definition of "State board" in § 400.4(b) and other regulations (e.g., § 401.10) referred to the "State board of vocational education," then § 401.14, concerning appointment of the State Council, should be revised to substitute "State board of vocational education" for the "State board of education."

Response. No change has been made. A review of the legislative history of the Act, including Item 178 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 89, demonstrates that Congress intended the conditional appointment authority to be vested in the State board of education.

Comment. One commenter was concerned that § 401.14 does not make it sufficiently clear that the State council was intended to be an independent organization, free of programmatic or administrative control by other State boards, agencies, and individuals. This commenter implied that at least one State was contemplating assigning the State council's functions, or perhaps its staff, to some other agency.

Response. No change has been made. Section 401.16(c)(1)(ii) clearly states that State councils are to carry out their functions independent of programmatic and administrative control by other State boards, agencies, and individuals. A further indication of the Council's independence is found in § 401.16(c)(2) which provides that the expenditure of funds awarded to State councils are solely determined by the State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

Comment. Several commenters were concerned that, while the Act provides for an orderly transition from the National Advisory Council on Vocational Education to the National Council on Vocational Education (Title V, section 3(b)(2)), there is no similar "transition opportunity" regarding State Advisory Councils on Vocational Education. These commenters felt that the Congress meant to "maintain continuity" from one organization to the other, at both the national and State levels.

Response. No change has been made. The Secretary does not believe that detailed, and possibly inflexible, regulations governing the transition from State Advisory Councils for Vocational Education under the Vocational Education Act to State Councils on Vocational Education under the Carl D. Perkins Act are warranted. As a practical matter, the transition to State councils under the Carl. D. Perkins Vocational Education Act commenced long before the effective date of these regulations, as part of the broader effort States made to prepare for the operation of programs under that Act. Moroever, under the Act, State councils are intended to function with a great degree of independence. With respect to the transfer and disposition of property and records, of course, applicable Federal and State law does apply.

Section 401.15 State council—membership requirements.

Comment. One commenter suggested that the membership requirements of the State council be changed to mandate representation of specific groups with significant numbers of economically disadvantaged persons.

Response. No change has been made. The membership requirements of the State council are statutory. However, § 401.15(a) does require that each State council be broadly representative of citizens and groups within the State having an interest in vocational education.

Comment. One commenter suggested that, since State council members appointed under the Vocational Education Act had been appointed to staggered terms, the regulations for the Carl D. Perkins Act should stipulate this same arrangement.

Response. No change has been made. The Vocational Education Act mandated that members of State advisory councils be appointed to staggered terms; the Carl D. Perkins Act carries no such requirement. However, the State has the option of appointing its new State council membership in this way. If council members are appointed to staggered terms, the appointing authority must maintain a duly certified State council, as required by the Carl D. Perkins Act, throughout the State plan period.

Comment. Several commenters recommended that § 401.15 be revised to prohibit State board members or State agency employees who are directly involved in State administration of vocational education from serving as members of the State council.

Response. No change has been made. The Secretary does not believe that detailed regulations regarding the membership of the State councils are warranted. However, the Secretary believes that the appointments mentioned in the comment may be inconsistent with the intended independence of the State council.

Comment. One commenter requested that § 401.15(c) be revised to name the State Apprenticeship and Training Councils as a specific source from which to obtain members on the new State councils.

Response. No change has been made. Section 401.15(c) repeats the wording of the Act which stipulates that, "the State shall give due consideration to the appointment of individuals who serve on a private industry council under JTPA, or on State councils established under other related Federal programs." The State Apprenticeship and Training Council is such a State council, and it would be appropriate for members of this council, among others, to be considered for membership on the State Council on Vocational Education.

Section 401.16 State council—responsibilities.

Comment. One commenter asked why § 401.16(b)(1) states that the State council and the State board must meet while the State plan is being developed, while section 112(d)(1) of the Act requires that such meeting be held during the "planning year."

Response. No change has been made. The Act uses a variety of undefined terms concerning planning and program operations. These include "planning year," "planning period," and "planning program periods." In order to avoid confusion over these terms and carry out the intent of the Act that the Council be involved in the planning process, the regulations require that the meeting take place while the State plan is being developed.

Comment. One commenter recommended that § 401.16(b)(1) be modified by dropping the phrase "or its representative" because the development of the State plan is a non-delegated responsibility of the State board.

Response. No change has been made. The phrase "or its representatives" appears in section 112(d) of the Act. The statute and regulations do not contemplate a delegation of functions, but merely recognize that often State board members do not personally participate in meetings where State plan provisions are drafted or developed.

Comment. One commenter noted that neither the Act nor the proposed regulations indicate to whom the State Council on Vocational Education should direct its reports of fiscal and other analyses or studies mandated in § 401.16(b) (3) and (6). The commenter recommended that additional guidance be provided.

Response. No change has been made. The Act does not clearly indicate to whom the specified analyses should be directed, and the Secretary does not believe detailed regulations are warranted. It is apparent from the statute, however, that the required analyses are intended to stimulate the development and improvement of vocational education programs within the State and that this purpose would be frustrated unless the analyses are distributed to those organizations (including the State board) and individuals within the State that are interested in, or responsible for, doing so.

Comment. One commenter urged that § 401.16(b)(8) specifically require that the report to the State board by the State council on the extent to which special populations are being provided with "equal access to quality vocational education programs" correspond to the criteria in § 401.18(c)(4).

Response. No change has been made. While it would be appropriate in some cases to apply the criteria as set forth in § 401.18(c)(4) to the report requirement set forth in § 401.16(b)(8), the Secretary does not believe inflexible regulations are warranted.

Comment. One commenter indicated that § 401.16(b)(9)(ii) requires the State councils to issue their reports of findings and recommendations in writing. The commenter asked if this meant that no oral reports or recommendations can be made. The commenter also asked if there were a possibility that this requirement might inhibit informal communications between the State councils and the groups with which they must work.

Response. No change has been made. The Secretary believes that the requirement that the mandated reports be in writing is implicit in the statute. That requirement in no way restricts informal meetings and discussions that are usually conducted verbally.

Section 401.17 State plan—requirements.

Comment. One commenter pointed out that § 401.17(b) requires States to carry out programs under the Act on the basis of program years which coincide with program years under JTPA while the statute requires coterminous "planning program periods" for both Acts. The commenter asked why the language was changed.

Response. No change has been made. The term "program year" was used instead of "planning program periods" in order to use language which is consistent with the "program year" planning requirements of JTPA.

Section 401.18 State plan—development.

Comment. One commenter recommended that § 401.18, pertaining to the development of the State plan, be revised to require each State to consider the role of prevocational education as a contributor to subsequent enrollment in vocational education programs. The commenter felt that the regulations should require each State plan to provide for "specific treatment of each vocational service area's (including Industrial Arts) contribution to the achievement of each State's overall objectives for vocational education."

Response. No change has been made. Relative emphases on prevocational and occupationally specific instructional programs are decisions that should be left to the State. The Act does not impose such a requirement and the Secretary believes that within the requirements of the law, States should be free to develop their State plans according to their own needs.

Comment. Several commenters asked that § 401.18(a) be changed to require States to involve community-based organizations (CBOs) in the development of State plans. The commenters felt that both State boards and State councils should be required to collaborate with CBOs.

Response. No change has been made. The law and regulations adequately address the commenters' concerns and the Secretary does not believe that additional regulatory requirements are warranted. Section 401.18(b) requires that the State board "conduct public hearings in the State, after appropriate and sufficient notice, for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations." Thus, CBOs would have an opportunity to comment as part of the State plan development process at one of the statewide public hearings.

Comment. One commenter pointed out that § 401.18(b) of the regulations stipulates that the State shall conduct "at least two public hearings" to develop its plan while section 113(a)(2)(B) of the Act uses the term "hearings" without assigning a number. The commenter proposed the possibility that specifying a number might have a "chilling effect" and discourage States from holding more than two meetings.

Response. No change has been made. As with the number of technical committees which must be established, the Act speaks to the requirement for public hearings in the plural. The Act clearly requires that more than one hearing take place. The least restrictive interpretation of more than one is "at least two," and the Secretary does not believe that clarifying the statute in this regard will discourage States from holding a greater number of hearings.

Comment. Several commenters recommended that States include in their State plans the various needs assessments required by section 113(a)(3) of the Act and § 401.18(c) of the regulations

Response. No change has been made. Section 113(b)(2) of the Act stipulates only that each State plan shall "describe how the State did carry out the provisions of section 113(a)(3)." This refers to the methods or procedures used, not the findings that resulted from employing such methods or procedures. However, a State may decide to include in its State plan a summary of the findings, as support for its proposed use of Federal funds.

Comment. Several commenters pointed out that Item 213 in the Conference Report says: "In assessing the capability of programs for special needs groups and the general vocational student population in meeting general occupational skills and improvement of academic foundations, States shall assess whether the program use problem-solving and basic skills (including mathematics, reading, writing, science, and social studies) in a vocational setting. It is the intent to give a student experience in and understanding of all aspects of the industry in which the student is preparing to enter." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 93). The

commenters recommended that this language be included in the regulations.

Response. No change has been made. In essence, the regulations in § 401.18(c) already reflect the Conference Report language, and the Secretary does not believe that additional regulatory language is warranted.

Comment. One commenter requested § 401.18(c)(3) be changed to require that the State board's assessment of the access of special needs groups to vocational education should include an assessment prepared by the personnel described in § 401.13.

Response. No change has been made. The regulations reflect the language of the Act and the Secretary does not believe that additional regulatory requirements regarding how the mandated assessments are performed are warranted. It should be noted that § 401.13(a)(4) requires the sex equity coordinator to submit to the State board an assessment of the State's progress in overcoming sex discrimination and stereotyping. The State board may utilize this assessment in complying with § 401.18(c)(3).

Section 401.19 State plan—content.

Comment. One commenter asked why maintenance of effort was specifically included in § 401.19 (a)(1) and (b)(8).

Response. No change has been made. The maintenance of effort requirement was specifically identified in § 401.19(a)(1) of the regulations in order to make clear to States that the general assurance requirement set forth in section 113(b)(1) of the Act included maintenance of effort. Section 401.19(b)(8) of the regulations makes clear that the Department may, at its discretion, require States to document their assurance that fiscal effort has been maintained.

Comment. One commenter pointed out that the intent of Congress as reflected in Item 226 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 96, was that awards by the State to State-operated schools or institutions should be counted as part of the 80 percent minimum local share. The commenter felt that the regulations did not make this point clear.

Response. A change has been made. Language has been added in § 401.19(a)(4) that makes clear that awards by the State to State-operated schools or institutions are counted as part of the 80 percent minimum of Title II funds that must go to eligible recipients.

Comment. One commenter felt that the requirement in § 401.19(a)(5) that 100 percent of the funds for handicapped and disadvantaged individuals be allotted to eligible recipients on a formula basis restricts the function of State agencies in adjusting programs, services, and activities to meet the needs of target groups.

Response. No change has been made. The requirement regarding the distribution of funds reserved for handicapped and disadvantaged individuals is statutory.

Comment. Several commenters felt that the statement in § 401.19(a)(6)(ii) "That in serving homemakers the State will give special consideration to homemakers who because of divorce, separation, or the death or disability of a spouse must prepare for paid employment" could be interpreted to mean that funds under section 201(f) of the Act could be used for programs and services designed to serve only such displaced homemakers. The commenters proposed that the regulations state that these funds may also be used for programs and services designed to serve only single parents.

Response. No change has been made. Section 113(b)(7) of the Act and § 401.19(a)(6)(ii) of the regulations merely require the State to give special consideration to the needs of certain displaced homemakers when funding programs under section 201(f) of the Act. Neither the Act nor the regulations authorizes the State to ignore the needs of other homemakers on single persons, and programs designed for such persons are authorized.

Comment. One commenter urged that the assurance in § 401.19(a)(8) concerning evaluation by the State board be more detailed, to the extent that all States would be required to use a single, common evaluation design. The commenter also recommended several additional evaluation criteria. Other commenters recommended different criteria, according to their own convictions or preferences.

Response. No change has been made. If the purpose of these State board evaluations were to compare programs and accomplishments in each State against the other States, there would be greater justification for this approach. However, the purpose of this in-State evaluation is to identify those programs which are effective and which can aid in program improvement. Each State is encouraged to tailor an evaluation system to meet its own needs and circumstances, building upon the minimum three measures required by the Congress in section 113(b)(9)(A) of the Act. The Secretary will provide technical assistance for these purposes as authorized under section 114(c)(1) of the Act.

Comment. One commenter recommended that § 401.19(a)(9) be expanded to include the following: "These appropriate measures shall evaluate the effectiveness of these programs according to the disability groups enumerated in the definition of 'handicapped': mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired persons, and persons with specific learning disabilities. Measures which only use the undifferentiated category of 'handicapped' shall be deemed not appropriate under these regulations."

Response. No change has been made. There is no support in the statute or its legislative history for such a requirement. States are provided the flexibility to determine the most appropriate evaluative measures.

Comment. Several commenters recommended that §401.19(a)(10) clarify whether 20 percent of the eligible recipients or 20 percent of the programs must be evaluated each program year. Some commenters wanted to know if all programs must be evaluated during the five-year period, or if some programs could be evaluated twice in order to meet the 20 percent requirement. Other commenters recommended that the regulations clarify that the evaluation requirement applies only to projects under the Act.

Response. A change has been made. Language has been added to § 401.19(a)(10) which clarifies that each program year a State must evaluate all projects, services, and activities of at least 20 percent of the participating eligible recipients supported under the Act in order that by the end of a five-year period, every local project which has received Federal funds will have been evaluated.

Comment. One commenter suggested that § 401.19(a)(10) be changed to require States to use a statistically reliable process to determine the number of programs, services and activities to be evaluated in the twenty percent of the eligible recipients to be evaluated annually.

Response. No change has been made. Item 231 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 97, makes clear that Congress intended each local project, service, or activity supported under the Act to be evaluated. To the extent that certain projects can be fairly evaluated using a statistically valid sampling process, the regulations do not preclude such an approach.

Comment. One commenter felt that the regulations should require the State plan to include provisions for curriculum and curriculum materials development by occupational areas for secondary schools.

Response. No change has been made. There is no statutory authority for such a requirement. In addition, §401.19(a)(11) requires States to fund curriculum development programs that further the goals identified in the State plan, and § 401.60(b)(2) (Proposed § 401.60(a)(8)) permits the State to use Title II, Part B funds for such development. The definition of "vocational education" in § 400.4(b) includes the various occupational fields. Accordingly, States have ample authority to pursue curriculum development in those areas in which there is a need.

Comment. Several commenters suggested that more specific directions be given in § 401.19(a)(13) on how cooperation between the State board and the State council might best be achieved.

Response. No change has been made. As a general matter, while the Secretary encourages maximum cooperation between State boards and State councils, the Secretary does not believe detailed, prescriptive regulations are appropriate. In addition, these regulations already provide for extensive coordination. For example, § 401.16(b)(1) provides that the State council must be closely involved in the development of the State plan, while § 401.16(b)(2) requires the councils to advise their respective State boards and make reports to the Governor, the business community, and the general public, on policies affecting vocational education. In addition to these general procedural safeguards, § 401.20(b) stipulates that, if the State council files any objection to the State plan for any reason, the State board must respond to such objection in submitting the plan to the Secretary. Regarding Part E of Title III of the Act, § 401.19(a)(22)(ii) requires an assurance in the State plan that projects assisted under that part will be developed with the active participation of the State council. Finally, regarding fiscal, programmatic, evaluative, and other data that the State council needs from the State board in order to carry out its various functions, section 113(b)(13) of the Act requires that the State plan submitted by the State board must include the assurance "that the State board will cooperate with the State council on vocational education in carrying out its duties under this part."

Comment. A commenter suggested that § 401.19(a)(13) be more specific as to how the State board will cooperate with the State council to carry out its duties. For example, the ability of the State council to (a) analyze and report on the distribution of all vocational education activities and services in the State, (b) assess the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs, and (c) report to the State board on the extent to which individuals described in § 401.51 are provided with equal access to quality vocational education programs requires the Council to be routinely provided with State fiscal, evaluation, and program data. The commenter recommended that the regulations should require that the State board routinely provide the State council fiscal, program, evaluation, and other data deemed appropriate in order for the Council to carry out its functions.

Response. No change has been made. As explained above, the Secretary believes that the intent of Congress that State boards cooperate closely with State councils so that the latter can perform their statutory functions is quite clear, and that detailed, and possibly inflexible regulations, are not warranted.

Comment. Numerous commenters wanted § 401.19(a)(18) to require an assurance that the State will use the basic grant funds reserved for vocational education services and activities for handicapped and disadvantaged individuals in accordance with the criteria specified in section 204(a) of the Act.

Response. No change has been made. Section 401.19(a) does require such an assurance.

Comment. Several commenters said that with respect to the assurances required in the State plan, § 401.19(a)(18) describes activities for which the handicapped set-aside funds should be used, while section 204(a) of the law requires that the State board provide assurances in order to be in compliance with the handicapped set-aside. The commenters felt that § 401.19(a)(18) sets limits on the use of funds, whereas the law establishes conditions that must be in place to receive the funds. The commenters recommended that the regulations be changed to reflect the Act.

Response. A change has been made. Both § 401.19 and the Act require a State to include assurances in the State plan prior to participating in programs under the State Vocational Education Program; in this sense, they both establish preconditions to State participation. Section 204(a) of the act, however, requires the State board to make these assurances pertaining to the criteria applicable to the services and activities provided to handicapped individuals and disadvantaged individuals "with respect to" the basic State grant funds reserved for these populations. The statutory phrase "with respect to" is ambiguous. Broadly speaking, it might be read to mean that the receipt of Federal funds triggers the application of the statutory criteria to the recipient's vocational education program. Or it might be read to mean that the recipient will comply with the statutory criteria in using the Federal funds for vocational education services and activities. In light of the available legislative history to section 204(a) of the Act, the Secretary believes that the latter interpretation—that Congress intended to ensure that the States would comply with certain equal access criteria *in using the Federal funds* reserved for handicapped individuals and disadvantaged individuals—is the more plausible interpretation. The legislative history of section 204(a) of the Act does not indicate that the Congress intended to expand the application of those equal access criteria beyond the reach of funds under the Act. However, an editorial change has been made in § 401.19(a)(18) to clarify that while States must use their funds reserved under the Act for handicapped and disadvantaged individuals in ways which are consistent with the mandated criteria, they need not expend those funds to comply with those criteria which are already being satisfied with funds from other sources.

Comment. One commenter suggested restricting the application of the equal access requirement for academically disadvantaged individuals in § 401.19(a)(18) to those students who have the academic ability to succeed in a program.

Response. No change has been made. The definition of "disadvantaged" individuals set forth in the Act and regulations refers to those who, by virtue of economic or academic disadvantagement, cannot succeed in a program without special services and assistance. The Secretary has identified, in § 400.4, the standards States may use to identify academically disadvantaged students. These standards are in accord with the standards suggested in Item 246 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 100, which does not propose a standard relating to the students' academic ability to succeed in a program.

Comment. Several commenters suggested that the "equal access" requirements in § 401.19(a)(18)(ii) (A)

and (B) be extended to include "appropriate subsections of section 504 of the Vocational Rehabilitation Act of 1973."

Response. No change has been made. The statutory language in section 204(a)(3)(A) of the Act refers to only the Education of the Handicapped Act.

Comment. One commenter felt that the regulations did not indicate what recourse the State council has if projects or programs under Title III of the Act are not developed with their active participation. The commenter recommended that § 401.19(a) (19)(i), (20), and (22)(ii) require State board certification of council involvement for funds expended under Title III of the Act.

Response. No change has been made. The Secretary believes the regulations are sufficiently detailed to ensure the active participation of State councils. Section 401.16(b)(1) provides that the State council must meet with the State board during the actual development of the State plan, and § 401.16(b)(2) describes the State council's responsibility to advise the State board and make reports to the Governor, the business community, and the general public. Section 401.11(c) indicates that, "the development, in consultation with the State council on vocational education, . . . of the State plan" is one of the major, non-delegable responsibilities of the State board. In addition to these general requirements, § 401.20(b) stipulates that if the State council files an objection to the State plan for any reason, the State board must respond to that objection in submitting the plan to the Secretary. Further, § 401.19(a)(22)(ii) requires an assurance in the State plan that projects assisted under Title III, Part E of the Act, will be developed with the active participation of the State council.

Comment. One commenter questioned why § 401.19(b)(1) uses the term "requirements" while the statute uses the term "criteria."

Response. No change has been made. Section 113(b)(1)(A) of the Act refers to "criteria required for programs" for handicapped and disadvantaged individuals. That Congress intended the application of these criteria as program requirements seems clear.

Comment. One commenter suggested that § 401.19(b)(2) require that the State plan include expenditures for inservice and preservice education of teachers by occupational areas.

Response. No change has been made. The Act does not impose such a requirement and the Secretary believes that such a detailed requirement is unwarranted.

Comment. Several commenters said that § 401.19(b)(2) should require State plans to include the goals of the State's program and the labor market needs addressed by the State program. The commenters also felt that each plan should contain a description of the planned uses for the Federal funds received under the Act rather than non-Federal funds.

Response. No change has been made. The regulations reflect the language of the Act, and the Secretary does not believe that additional, and possibly burdensome, State plan requirements are warranted. Moreover, section 113(b)(3) of the Act and § 401.19(b)(3) of the regulations do, in effect, require each State plan to contain a statement of goals. In addition, section 113(a)(3)(A) of the Act and § 401.18(c)(1) of the regulations require States, in developing their State plans, to "assess the current and projected occupational needs and the current and projected demand for general occupational skills within the State," and the Secretary believes that the statement of goals in the State plan will reflect the State's labor market needs.

Comment. Several commenters noted that both § 401.19(b)(4) and section 113(b)(5) of the Act require that eligible recipients located in economically depressed areas receive more of the Federal funds received by the State than eligible recipients not located in economically depressed areas. Commenters were concerned that if this provision is interpreted to mean at least $1.00 more than half of the State's basic grant, such an interpretation will result in disporportionate allocations of funds, perhaps sending large amounts of money to areas with very small student populations. Commenters requested that the Secretary interpret the word "more" to mean that the economically depressed areas should receive proportionately more funding, e.g., on a per pupil or per capita basis.

Response. No change has been made. Item 218 in the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 95, clarifies that the intent of section 113(b)(5) is "to see that eligible recipients in economically depressed areas annually receive more total funds than the total amount of funding awarded to eligible recipients in areas which are not economically depressed." Section 401.19(b)(4) of the regulations is consistent with both the language and the intent of the statute as explained in the Conference Report.

Comment. Several commenters noted that § 401.19(b)(4) of the proposed regulations omitted the phrase "or which have high unemployment" which appears in section 113(b)(5) of the Act. The commenters pointed out that the omission of this phrase could have the effect of changing the in-State distribution requirements.

Response. A change has been made. References to areas of high unemployment have been added to the fund distribution requirement in § 401.19(b)(4) to more closely reflect the language of the statute. States may now identify areas of high unemployment as well as economically depressed areas for the purpose of this requirement. Corresponding changes have been made to §§ 401.19(b)(12) and 401.102.

Comment. One commenter said that § 401.19(b)(4) failed to express the intent of Congress as set forth in Item 218 of the Conference Report which says: "In requiring States to allocate more funds to recipients in economically depressed areas, the intent of the managers is to see that eligible recipients in economically depressed areas annually receive more total funds than the total amount of funding awarded to eligible recipients in areas which are not economically depressed. Yet, for the purpose of program improvement, this does not mean that every eligible recipient must receive funds in every year. In fact, the conferees feel that, in order to make optimal use of program improvement and modernization funding, resources may need to be concentrated in some, not all eligible recipients."

Response. No change has been made. The fund distribution requirement in § 401.19(b)(4) accurately reflects section 113(b)(5) of the Act and the intent of Congress as expressed in the Conference Report. The requirement does not "entitle" any eligible recipient to funding in any year but involves, instead, an analysis of aggregate funding to eligible recipients in areas deemed economically depressed or afflicted with high unemployment in comparison to aggregate funding to eligible recipients not in such areas. The Secretary agrees with the language in the Conference Report that for maximum program effectiveness, funding may have to be concentrated in particular eligible recipients.

Comment. Several commenters recommended that the State plan include a description, in sufficient detail, of the criteria used by the State to distribute all funds, and the basis for those criteria.

Response. No change has been made. Section 401.19(b)(4) already requires the State plan to include a description of such criteria in sufficient detail to show how all funds will be distributed so that

eligible recipients in economically depressed areas or areas with high unemployment will receive more Federal funds under the Act, in the aggregrate, than eligible recipients not in such areas. The Secretary believes that this level of regulatory detail is sufficient.

Comment. One commenter suggested that § 401.19(b)(8) require a description of how the State board will comply with Titles I, II, III, and V of the Act.

Response. No change has been made. The Act does not require such descriptions, and they would be an unnecessary burden on the States. The Secretary retains the authority to request additional information when necessary.

Comment. One commenter felt that the definition of "economically depressed area" chosen by a State should be well-documented in the State plan. The commenter suggested that the Department should require the States to describe: (a) the State definition of "economically depressed area"; (b) the data used to make such determinations; and (c) how these determinations are compatible with other State-designated economically depressed areas.

Response. No change has been made. Section 401.19(b)(12) requires each State to include in its State plan the criteria the State will use to identify economically depressed areas and areas with high unemployment. If the Secretary needs additional information to understand these criteria, it will be requested on a case-by-case basis.

Comment. One commenter suggested that § 401.19 require the State plan to include comments submitted in connection with the public hearings held by the State.

Response. No change has been made. Section 401.19(b)(13) already mandates that a summary of recommendations made at the public hearings and the State board's responses to those recommendations be included in the State plan.

Section 401.20 State plan—submission.

Comment. One commenter recommended that § 401.20 require the State board to provide the State job training coordinating council (SJTCC) with a response to any objections the SJTCC has with the State plan. The commenter felt that this requirement would enhance the close coordination mandated by the Act between the State board and the SJTCC.

Response. No change has been made. The wording of § 401.20(a)(2) of the regulations repeats the wording of section 114(a)(1) of the Act, which states that "if the matters raised by the comments of the . . . State job training coordinating council are not addressed in the State plan, the State board shall submit those comments to the Secretary with the State plan." In contrast, section 114(b)(2) of the Act requires the State board to respond to any objections of the State council when submitting the State plan to the Secretary. It is clear that Congress intended that the comments of the State council and the SJTCC be treated differently by the State board. However, the Act does not prohibit a State board from responding directly to the SJTCC concerning its comments on the State plan.

Comment. One commenter suggested adding to § 401.20(b) (2) and (3) provisions for the "sex equity coordinator" to file objections concerning the State plan with the State board, and for the State board to respond to such objections.

Response. No change has been made. The Act neither requires nor prohibits the filing of such objections. In addition, § 401.13(b)(4) requires the "sex equity coordinator" to submit to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping. In preparing this assessment, the "sex equity coordinator" may raise concerns and criticisms of the State plan's provisions for programs designed to overcome sex discrimination and sex stereotyping.

Section 401.21 State plan—amendment

Comment. One commenter noted that while section 113(c)(1) of the Act contains the phrase "in consultation with the State council," § 401.21 of the proposed regulations omits this language.

Response. A change has been made. The phrase "in consultation with the State council" was inadvertently omitted and has been added to the first sentence in § 401.21 immediately following the phrase "the State board."

Comment. One commenter felt that, since the proposed regulations refer to procedures for making and submitting amendments to the State plan, a more precise definition of the term "amendment" should be inserted in the regulations.

Response. No change has been made. While § 401.21 provides general guidance on State plan amendments, each State must decide if and when changes in the program would require an amendment to the State plan. Additional guidance on State plan amendments may be found in 34 CFR 76.140 through 76.142.

Section 401.22 Maintenance of fiscal effort.

Comment. A number of commenters requested that § 401.22(a) be changed so that expenditures for purposes of determining maintenance of effort compliance would be as current expenses only.

Response. No change has been made. The Secretary does not believe that additional, detailed regulations regarding the maintenance of effort computation are warranted. However, section 503 of the Act states that to be eligible to receive funds under the Act, States must maintain their expenditures "for vocational education." The Secretary interprets the Act, consistent with prior practice under the Vocational Education Act, to include both current and capital expenditures for vocational education, as defined in section 521(31) of the Act and § 400.4(b) of the regulations. States may include vocational educational construction costs, if they desire.

Comment. One commenter noted that § 401.22(a) stripulates that the aggregate expenditures of the State to be maintained must be "from State sources." The commenter asked for the statutory basis of this provision.

Response. No change has been made. The regulations are consistent with the language of the Act, which refers to the fiscal effort or expenditures "of such State." In addition, unlike the Vocational Education Act, the Carl D. Perkins Act does not require the maintenance of fiscal effort at the local level. It is reasonable to believe, therefore, the Congress did not believe that local expenditures should be included in State level maintenance of effort computations.

Comment. One commenter noted that use of the term "program year" in addition to "fiscal year" in § 401.22(a) could make a significant difference in the maintenance of effort calculation. The commenter asked why "program year" was added.

Response. No change has been made. While section 503 of the Act refers to fiscal years as the basis for maintenance of effort computations, States are required under the Act to carry out their vocational education programs on the basis of program years. It is reasonable and appropriate, therefore, to provide the flexibility to the States to perform their maintenance of effort computations on either a fiscal year or a program year basis, and the Secretary does not believe that Congress intended to preclude such flexibility.

Comment. One commenter recommended that § 401.22 should specify that maintenance of effort shall be based on State funds directly applicable only to those vocational education programs supported under the Carl D. Perkins Act. The commenter reasoned that the law should not hold a State responsible for maintaining expenditures for programs not supported under the Act.

Response. No change has been made. The Act requires that the State maintain expenditures for vocational education. This includes all expenditures from State sources which meet the definition of vocational education as set forth in section 521(31) of the Act. The Secretary does not believe a more restrictive interpretation would accurately measure the level of fiscal effort for vocational education, or be appropriate.

Comment. One commenter expressed the view that § 401.22(a) should be changed to reflect fiscal year 1986 as the base year of determination for applying the maintenance of effort requirement. The commenter reasoned that it would be inappropriate to compare State expenditures under the Carl D. Perkins Act to those made by the State prior to the enactment of the new law.

Response. No change has been made. Section 503(a) of the Act clearly prescribes the preceding year and the second preceding year as the years of comparison for each maintenance of effort computation. The Secretary believes it is appropriate to compare State expenditures for vocational education in those two years, regardless of the enactment of the Carl D. Perkins Act, because those expenditures are an indicator of the countinuing level of State fiscal effort for vocational education.

Section 401.30 Allotments under the State Vocational Education Program.

Comment. One commenter asked whether payments to State councils are based upon an "approved" State plan.

Response. A change has been made. Section 501(b) of the Act specifies that a State plan must be approved before funds under the Act may be paid to the State council. Therefore, the phrase "upon approval of the State plan" has been added to § 401.30(b)(2). The statutory citation for this provision has also been added.

Comment. One commenter asked for the rationale behind § 401.30(b)(2) which requires a State council to submit to the Secretary an annual budget covering the proposed expenditures of the State council.

Response. No change has been made. The requirement is necessary for the Secretary to maintain accountability for expenditures under the Act, and reflects long-standing administrative practice.

Section 401.31 Reallotments under the State Vocational Education Program.

Comment. Several commenters requested that the regulations provide more guidance with respect to the criteria the Secretary will use in realloting funds under § 401.31(a)(1).

Response. No change has been made. In the past, the Secretary has rarely had occasion to reallot State grant funds and believes it is desirable to retain sufficient flexibility to meet unforeseeable circumstances in the future. Therefore, the Secretary does not believe that additional regulatory detail is warranted at this time.

Section 401.32 Approval of State plans and amendments by the Secretary.

Comment. One commenter pointed out that § 401.32(a) omits the phrase "unless the proposed changes are inconsistent with the requirements and purposes of the Act" as it appears in section 113(c)(2) of the Act.

Response. A change has been made. The phrase "unless such amendments propose changes that are inconsistent with the requirements and purposes of the Act" was inadvertently omitted in the proposed regulations and has been added to § 401.32(a)(1) immediately following the phrase ". . . to a State plan."

Section 401.40 How a State carries out the State Vocational Education Program.

Comment. One commenter was concerned that, since § 401.40(b)(3) of the proposed regulations said that a State board acts directly when it supports local projects, services, or activities at State institutions, a State may interpret this as a way to evade the requirement that 80 percent of the basic State grant be passed through to eligible recipients.

Response. No change has been made. Although the regulations have been changed to clarify the State board's authority to carry out programs either directly, through State institutions, or through eligible recipients, the regulations continue to authorize States to count funds awarded to State institutions towards satisfying the 80 percent eligible recipient share. Item 226 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 96, makes it clear that Congress intended that vocational schools which are administered by the State should be considered eligible recipients for purposes of section 113(b)(4) of the Act and funds allotted to these schools should count in the 80 percent eligible recipient share.

Comment. One commenter requested that § 401.40(c) be modified by adding "or other State agency" to the list of examples provided in this paragraph. The commenter reasoned that the addition of such language would make it clear that State agencies other than the State Board for Vocational Education (such as the Department of Corrections) can administer programs under the Act.

Response. A change has been made. With the exception of certain responsibilities, section 111(a)(1) of the Act provides clear authority for the State board to delegate any of its responsibilities involving administration, operation, or supervision of programs to one or more appropriate State agencies. In addition, § 401.40(a) authorizes a State board to make awards to a variety of State institutions to carry out programs under the Act.

Section 401.41 Local applications.

Comment. One commenter wanted the regulations to clarify that while a State may exempt small eligible recipients from the application requirements in § 401.41, the State is still required to abide by the other requirements of the Act for distributing funds to those small eligible recipients.

Response. No change has been made. The assurances that a State will comply with the requirements of the Act, including fund distribution, are contained in § 401.19, and no additional regulations are warranted. The commenter is correct that a waiver from local application requirements does not constitute a waiver from other provisions of the Act.

Comment. One commenter recommended that § 401.41(c) prescribe a methodology for the involvement of community-based organizations (CBOs) in the decision making process at the local level.

Response. No change has been made. Apart from the application requirements for the program for State assistance to the Community-Based Organizations under section 301 of the Act and § 401.72(b) of the regulations, the Act does not require the involvement of a CBO in the development of each local application. A State may require such involvement if it wishes.

Comment. One commenter pointed out that the statute requires the local application to cover the same period as the State plan while § 401.41(a)(2) of the regulations suggests that the period of the application could be shorter as long as it falls within the time frame of the

plan. The commenter asked for the rationale for this change. Other commenters pointed out that a multi-year local planning requirement is inconsistent with the annual planning cycle used by most eligible recipients.

Response. No change has been made. There is no indication in the legislative history that Congress intended that all local applications must be for multi-year periods. In addition, a requirement for multi-year local plans would be inconsistent with the annual allocation process as required by section 203(a) of the Act.

Section 401.52 and section 401.53 Program for handicapped and disadvantaged individuals.

Comment. One commenter suggested that § 401.52(b) exclude community-based organizations from excess cost requirements.

Response. No change has been made. Section 201(c) of the Act provides that funds reserved for handicapped and disadvantaged individuals be used solely for the supplemental or additional costs of such individuals, without exception. In addition, section 113(b)(4) of the Act requires that 100 percent of the funds reserved for handicapped and disadvantaged individuals be distributed to eligible recipients. Community-based organizations are not eligible recipients as defined in section 521(14) of the Act.

Comment. Commenters asked why §§ 401.52(b) and 401.53(a)(2) omitted the word "conditions" as it appears in section 201(c) of the Act.

Response. A change has been made. The Secretary omitted the word from the proposed regulation to clarify the meaning of the provision. However, the commenters' concern has persuaded the Secretary to adopt the language of the statute. The words "the condition of" have been added to the first sentences of §§ 401.52(b) and 401.53(a)(2).

Comment. One commenter expressed the view that the fiscal requirements attached to programs for handicapped and disadvantaged individuals as authorized in §§ 401.52, 401.53, and 401.94 will devastate vocational programs in correctional institutions and in State schools for the deaf and blind. The commenter referred specifically to the matching requirement and the "excess" cost requirements as applied to separate programs for handicapped and disadvantaged individuals.

Response. No change has been made. These fiscal requirements are set forth in sections 201 (c) and (d) and 502(a) of the Act.

Comment. One commenter pointed out that §§ 401.52(b) and 401.53(a)(2) stipulate "expenditures for the comparable regular vocational education services and activities" while the statute refers to "expenditures for regular services and activities." The commenter asked why the words "comparable" and "vocational education" were added to the regulations.

Response. No change has been made. The words "comparable" and "vocational education" were added in §§ 401.52(b) and 401.53(a)(2) to reflect the intent behind section 201(c)(1) of the Act that the costs of non-mainstreamed programs for handicapped and disadvantaged persons be compared to the same types of programs for non-handicapped or non-disadvantaged individuals in order to obtain valid cost comparisons.

Comment. One commenter expressed the view that §§ 401.52(b) and 401.53(a)(2) will impose burdensome data-gathering requirements on eligible recipients since those regulations require individual cost comparisons between non-mainstreamed programs for handicapped and disadvantaged individuals and comparable regular vocational education programs. The commenter recommended that the regulations permit the use of state-level average cost differentials in place of individual program cost comparisons by an eligible recipient.

Response. No change has been made. Section 201(c)(1) of the Act clearly requires individual program cost comparisons by an eligible recipient.

Comment. One commenter requested that the phrase "services and activities" as it appears in section 201 of the Act be interpreted so as to allow eligible recipients to expend funds received under the handicapped and disadvantaged set-asides for curriculum development and professional development for programs serving the handicapped or disadvantaged.

Response. No change has been made. Section 201 of the Act permits eligible recipients to use funds allotted for handicapped and disadvantaged individuals under Part A of Title II of the Act to provide for in-service training and curriculum development for vocational education programs serving handicapped or disadvantaged persons.

Comment. One commenter was concerned that while § 401.52 accurately reflected the wording of section 201(c) of the Act, it might be read to encourage separate rather than integrated programs for handicapped individuals.

Response. No change has been made. However, Item 91 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 77, makes it clear that, even though a distinction is made between "excess" cost requirements for handicapped students in mainstreamed classes and those in separate programs, it is not the intent of Congress to in any way encourage the creation of separate programs for handicapped students.

Comment. One commenter requested that the limitation in § 401.53(b)(2) on the use of funds for acquisition of modern machinery and tools for disadvantaged individuals be eliminated. The commenter felt that the requirement prevented the purchase of up-to-date equipment and materials for a home economics class.

Response. No change has been made. Section 201(d)(2) of the Act clearly imposes this limitation on the use of funds for the acquisition of modern machinery and tools, including equipment, materials, and supplies. It should be noted that this restriction applies only to funds under Title II, Part A reserved for disadvantaged individuals and applies to schools, not classes, in which at least 75 percent of the students enrolled are economically disadvantaged. Funds under Title II, Part B and Title III of the Act which may be used to purchase equipment are not subject to this restriction.

Comment. One commenter suggested changing the restriction in § 401.53(b)(2), which provides that funds reserved for disadvantaged individuals may be used for acquiring modern machinery and tools "*only*" in schools in which at least 75 percent of the students are economically disadvantaged. The commenter wanted "only" changed to "especially."

Response. No change has been made. Item 81 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 75, specifies that funds may be used to purchase equipment "only in" schools with a 75 percent or more economically disadvantaged enrollment.

Section 401.55 Vocational Education Opportunities Program—programs for single parents or homemakers.

Comment. Several commenters recommended that the regulations should clarify whether participants in programs used for the activities in § 401.55 must be both "single parents and homemakers."

Response. A change has been made. The Secretary interprets this section to mean that programs must serve individuals who are either single parents or homemakers, or both.

Comment. Several commenters recommended that the regulations clarify whether programs serving single

parents or homemakers must include all five activities listed in § 401.55.

Response. A change has been made. In reserving funds for programs serving single parents or homemakers, States may select one or more of the five activities listed under § 401.55.

Comment. One commenter pointed out that section 201(f)(1) of the Act contains the phrase "provide, subsidize, reimburse, or pay for vocational education" while § 401.55(a) of the proposed regulations uses only the term "provide." The commenter asked why the other statutory terms were omitted.

Response. A change has been made. In the proposed regulations, the Secretary attempted, where possible, to simplify the language of the Act without altering its meaning. However, because commenters raised concerns about this change, the exact wording of the Act has been added to § 401.55(a).

Comment. One commenter suggested that § 401.55(c) erroneously provides for "subgrants" to community-based organizations. The commenter felt that since the statute provides for "grants" to CBOs under section 201(f) of the Act, § 401.55 should be corrected.

Response. No change has been made. It is standard Education Department regulations terminology to refer to a grant award from the State in a State-administered program as a "subgrant."

Section 401.56 Vocational Education Opportunities Program—programs designed to eliminate sex bias and stereotyping.

Comment. One commenter expressed concern over funds under § 401.56(a)(2) being used for girls and women only. The commenter also felt that § 401.56 must clearly distinguish between programs which eliminate sex bias for both males and females and those which are for females only.

Response. No change has been made. Sections 201(g) (1) and (3) of the Act and § 401.56(a) (1) and (3) of the regulations clearly authorize programs that are meant to serve both males and females. Section 201(g)(2) of the Act and § 401.56(a)(2) of the regulations authorize programs, services, and activities for girls and women, aged 14 through 25.

Comment. One commenter suggested that § 401.56(a)(2) be changed to reflect the language of Item 93 of the Conference Report which provides that ". . . vocational education programs, services, and activities for girls and women provided under section 201(g)(2) of the Act [are to] be supplemental and designed to meet the special needs of girls and women desiring to enter nontraditional occupations or other fields enhancing their career opportunities." House Report No. 98–1129, 98th Cong. 2d Sess. pp. 77, 78.

Response. No change has been made. The suggested language refers to the supplemental nature of programs, services, and activities. The meaning of this language is unclear in light of the language contained in Item 80 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 75, which stipulates that this program is not subject to excess cost requirements. The balance of the proposed language in Item 93 of the Conference Report does appear in the regulations in proximate form.

Section 401.57 Vocational Education Opportunities Program—programs for criminal offenders.

Comment. One commenter requested that funds set aside for criminal offenders under section 201(b)(6) of the Act be excluded from the supplemental or additional cost requirement as set forth in section 201(c)(1) of the Act.

Response. No change has been made. The supplemental or additional cost requirement as set forth in section 201(c)(1) of the Act does not apply to expenditures for criminal offenders under section 201(b)(6) of the Act.

Section 401.58 Vocational Education Opportunities Program—additional uses of funds.

Comment. One commenter pointed out that Item 45 of the Conference Report contains guidelines for determining the cost effectiveness of providing vocational education through private vocational institutions, employers, or community-based organizations. The commenter suggested that these guidelines be incorporated into § 401.58(a)(2)(i)(B).

Response. No change has been made. The Conference Report explains with reference to section 201(h)(2) of the Act and § 401.58(a)(2) of the regulations that "when deciding which institutions can deliver services in a cost effective manner, consideration should be given to expenses, such as the depreciation of rental cost of buildings and administrative expenses for all institutions so that comparisons on the ability to provide services on a competitive basis in an equitable one." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 71). While the Secretary believes these are excellent suggestions for determining the cost effectiveness of programs, and encourages States to consider these factors, the Secretary does not believe that detailed and possibly prescriptive regulations regarding the considerations that must be weighed are necessary or appropriate. In addition, the Secretary is confident that States will consider the factors suggested in the Conference Report without being required to do so in the regulations.

Section 401.59 Vocational Education Improvement, Innovation, and Expansion Program.

Comment. A number of commenters objected to proposed § 401.59(b) which required States to use funds under Title II, Part B to expand, improve, modernize, or develop vocational education services and activities and prohibited the use of those funds to maintain existing services and activities. Some commenters said that some of the services and activities authorized by section 251 of the Act inherently improve, expand, or develop existing vocational education programs. Others thought the proposed regulations prohibited the use of funds for existing programs, including those that are under development.

Response. A change has been made. The legislative history of Title II, Part B makes it clear that Congress intended services and activities funded under this program to represent an improvement, expansion, or development of vocational education programs. However, the Secretary believes that the commenters are correct in pointing out that certain of the services and activities authorized by section 251 do, by their very nature, contribute to the expansion, improvement, or development of vocational education programs. Because these services and activities are inherently related to the improvement of programs, it would be consistent with the intent of Congress to permit States and eligible recipients to maintain them where they already exist, but not the other services and activities authorized by section 251.

Accordingly, §§ 401.59 and 401.60 have been rewritten to clarify which authorized activities are inherently related to the improvement of programs (§ 401.60 (b) and (c)) and those which are not (§ 401.60(a)). States and eligible recipients may use funds under this program to continue existing services and activities which fall into the former category, but not services and activities in the latter category. States and eligible recipients may use funds under this program to support only those particular aspects of their services and activities in the latter category (§ 401.60(a)) which represent an innovation, expansion, improvement, modernization, or development.

Comment. A number of commenters expressed the view that the regulations should provide that the improvement or expansion requirement of Part B of Title II of the Act is met if an eligible recipient offers a program, service, or activity new to that eligible recipient and Federal funding under Part B of Title II does not exceed three years. Other commenters recommended that States be allowed to determine the length of time an activity may be considered new or improved.

Response. A change has been made. Section 401.59(b)(2) now clarifies that any vocational education project, service, or activity which has not been offered during the previous instructional term by a recipient may be considered as an improvement or expansion of the vocational education program of that recipient. In addition, such program, service, or activity may be considered as an improvement or expansion for a period of up to three years. The Secretary believes that this latter provision gives the States adequate flexibility while maintaining the essentially improvement-oriented nature of Title II, Part B. However, the Secretary does not feel that it would be appropriate to leave the determination of which programs inherently contribute to the improvement, expansion, or development of vocational education programs to the States.

Comment. One commenter was concerned that the prohibition, in § 401.59, regarding program maintenance would eliminate joint funding by the Federal and State governments of the salaries of counselors and technical assistance personnel.

Response. A change has been made. As noted above, § 401.59 has been changed to permit the maintenance of certain projects, services and activities, but not others. However, the prohibition against program maintenance would not prohibit joint funding of the salaries of counselors and technical assistance personnel by the Federal and State governments.

Section 401.60 Vocational Education Improvement, Innovation, and Expansion Program—use of funds.

Comments. Many commenters requested clarification of whether program activities in § 401.60 must be both improved and expanded.

Response. No change has been made. Programs, services, and activities satisfy the conditions of Title II, Part B of the Act when they improve an existing program, expand an existing program, or both improve and expand an existing program. However, funds may be used only for that portion of the existing program being improved or expanded, or both. Funds may also be used to support new activities.

Comment. Several commenters suggested a broad array of specific examples to be included in § 401.60 as program activities which improve vocational education.

Response. No change has been made. The Secretary agrees that some activities, by their very nature, improve the quality of vocational education. However, the Secretary believes that the inclusions of additional specific activities is not warranted. Item 38 of the Conference Report explains that "In listing the authorized activities under the State grant, the managers note that this list is intended to be general and illustrative, not limiting. States may fund activities that are not specifically listed but are in compliance with the purposes of the legislation." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 69). Further, section 251(a)(24) of the Act and § 401.60(a)(14) of the regulations provide for the improvement or expansion of any other vocational education activities authorized under Title II, Part A of the Act.

Comment. A commenter suggested that since apprenticeship programs are of an on-going nature, apprenticeship programs funded under Part B of Title II of the Act should be excluded from the program improvement requirement in § 401.60(a)(1) of the regulations.

Response. No change has been made. Section 251(a)(1) of the Act specifically requires apprenticeship training programs to meet the program improvement condition for funding.

Comment. One commenter suggested that § 401.60(a)(9) (Proposed § 401.60(a)(11)) be changed to refer to practical applications "which are an integral part of the student's prevocational, vocational, or occupational program." The commenter felt that this change would clarify that reinforcement of mathematics and scientific principles via practical applications in prevocational, industrial arts and similar programs is permissible.

Response. A change has been made. Section 401.60(a)(9) has been changed to refer to practical applications "which are an integral part of the student's prevocational or vocational program." This change clarifies the intent of the law and gives the State more flexibility in its application.

Comment. One commenter wanted § 401.60(a) (11) and (12) (Proposed §401.60 (a) (14) and (15)) to incorporate language from Item 37 of the Conference Report which specifies that funds for prevocational, and modern industrial and agricultural arts programs be directed toward activities that are modern and incorporate the latest advances in technology.

Response. No change has been made. Item 37 of the Conference Report explains that in authorizing prevocational education, vocational agriculture, and industrial arts programs, Congress intended these programs "be directed, to the extent possible, toward those activities that are modern and incorporate the latest advances in technology," including programs designed to "provide students with awareness and basic skills in expanding and new technology areas such as robotics, lasers, computers, electronics, industrial power systems, fluidities, hydraulics, pneumatics, telecommunications, and biotechnology." (House Report No. 98–1129, 98th Cong. 2d Sess. p. 69). While the Secretary supports these goals and encourages States to adopt them, the Secretary believes they are implicit in the language of the Act and the regulations, especially given the improvement-oriented nature of the program, and that the requested level of regulatory detail is inappropriate.

Comment. One commenter wanted § 401.60(a)(12) (Proposed § 401.60(a)(15)) to clarify that "modern industrial and agricultural arts" means modern industrial arts programs and/or modern agricultural arts programs.

Response. A change has been made. Since there is no special instructional program called "modern industrial and agricultural arts," § 401.60(a)(12) refers to the two distinct programs of modern industrial arts and modern agricultural arts. The Secretary interpretes congressional intent to be that new techniques and new learning experiences be applied in these two different instructional programs.

Comment. One commenter expressed concern that expenditures for personnel to coordinate efforts for apprenticeship and training programs under § 401.60(b)(3) (Proposed § 401.60(a)(12)) would result in duplication of effort. In particular, the commenter suggested that such expenditures would duplicate efforts of agencies which already address apprenticeship coordination within a State.

Response. No change has been made. Avoiding duplication of effort is an important part of effective program management. States are expected to avoid such duplication. The regulations do not require the expenditure of funds for this purpose.

Comment. One commenter expressed concern that § 401.60(c) (Proposed

§ 401.60(b)) concerning the use of funds for preservice and inservice training under Title II, Part B of the Act could be construed as restricting the use of funds to programs serving handicapped and disadvantaged individuals. The commenter also requested that the regulations be changed to permit the use of funds under Title II, Part A of the Act for preservice and inservice training of vocational education personnel and guidance counselors.

Response. No change has been made. In § 401.60(c) (Proposed § 401.60(b)), preservice and inservice training which focuses on the integration of handicapped and disadvantaged students in regular vocational education courses is a program emphasis, but it is not intended to restrict preservice and inservice training programs to serving such individuals. With regard to the second portion of the comment, preservice and inservice training may be funded under Title II, Part B of the Act. In addition, while inservice training is authorized in some circumstances under Title II, Part A, the Secretary interprets Title II, Part A to prohibit the use of funds for preservice training.

Comment. One commenter suggested deleting the provision in § 401.60(c) (Proposed § 401.60(b)) that expansion, improvement, modernization, and development funds be awarded to "eligible recipients." Another commenter suggested that the words "to expand, improve, modernize, and develop" be deleted from § 401.60(b) of the proposed regulations because they are not found in the Act.

Response. A change has been made. The reference to eligible recipients in § 401.60(c) has been deleted. Section 401.60(c) now adheres more closely to the language of section 251(b) of the Act and requires each State to make awards for the specified purposes. In addition, the phrase "to expand, improve, modernize, and develop" has also been deleted from § 401.60(c). The phrase has been retained in § 401.59(a), however, because that phrase accurately reflects the intent of Congress with respect to Title II, Part B, as described in section 2(1) of the Act.

Comment. One commenter asked why, in describing preservice and inservice training, § 401.60(c) (Proposed § 401.60(b)) used the term "awards" when section 251(b) of the Act uses only the term "grants."

Response. A change has been made. The term "awards" has been changed to "subgrants" to more closely reflect the language of the Act.

Comment. One commenter requested clarification on the amount of funds under Title II, Part B of the Act that must be expended for preservice and inservice training. The commenter suggested that stipulating a minimum amount in the regulations would provide guidance.

Response. No change has been made. Neither the Act, section 251(b), nor the regulations, § 401.60(c), specify a minimum amount that must be used for preservice and inservice training. The States are the best judges of their needs in this area. However, the regulations do require the States to make awards for this purpose.

Comment. One commenter recommended that the regulations provide further guidance on the use of teachers to perform placement and follow-up services for vocational education students.

Response. No change has been made. The regulations neither prohibit nor require the use of teachers to perform placement and follow-up services, and the Secretary does not believe more prescriptive detail is warranted.

Comment. One commenter suggested that vocational education classes are often smaller and thus more costly than general education classes. The commenter suggested allowing the resultant added cost of vocational education courses to be funded under Title II, Part B.

Response. No change has been made. Title II, Part B funds are to be used for improving, expanding, modernizing, and developing vocational education programs. Funds may be applied to that portion of a program in which a service or activity improves, expands, modernizes, or develops an existing program. Funds may also be used for certain services and activities which, by their nature, improve the quality of vocational education. These activities are authorized regardless of class size or relative cost compared to general education courses.

Section 401.61 Vocational Education Improvement, Innovation, and Expansion Program—distribution of funds by a State.

Comment. A commenter recommended that § 401.61(a)(1) be rewritten to clarify that a State may use funds under the Vocational Education Improvement, Innovation, and Expansion Program in the manner best suited to carry out the purposes of "the Act as implemented through" the State vocational education programs in that State.

Response. A change has been made. The provisions of § 401.61(a)(1) have been reworded to reflect more accurately the provisions of the Act. The phrase "the Act as implemented through" has been added before "the State Vocational Education Program in that State."

Section 401.71 Special Programs—State Assistance for Vocational Education Support Programs by Community-Based Organizations.

Comment. One commenter asked why § 401.71(b) incorporated the provision relating to handicapped individuals. Another commenter felt that § 401.71(b) should be deleted from the regulations since section 302 of the Act does not say that handicapped persons are to be served by the State Assistance for Vocational Education Support Programs by Community-Based Organizations.

Response. No change has been made. The definition of community-based organizations as set forth in JTPA includes such agencies serving handicapped individuals. The Secretary believes that Congress did not wish to preclude community-based organizations from serving educationally or economically disadvantaged individuals who also happened to be handicapped.

Section 401.72 Special Programs—application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations.

Comment. One commenter felt that funds under Title III of the Act should be given directly to community-based organizations without the joint application requirements in § 401.72(a).

Response. No change has been made. Section 301 of the Act requires a joint application for funding of CBOs under Title III.

Comment. One commenter requested that § 401.72 require community-based organizations to be bonded in order to participate in federally funded vocational education programs.

Response. No change has been made. The statute does not require bonding of community-based organizations as a precondition for eligibility.

Section 401.73 Special Programs—Consumer and Homemaking Education Program.

Comment. One commenter suggested changing the term "Consumer and Homemaker" to "Consumer and Homemaking" in §§ 401.70, 401.73 and 401.102 of the regulations to avoid confusion with the displaced homemaker or single parents and homemaker programs.

Response. A change has been made. This recommendation is accepted and

the necessary changes have been made in the regulations.

Comment. One commenter asked why, in describing activities under the Consumer and Homemaking Education Program, the phrase "including resource management" was omitted from § 401.73(a)(2)(v) of the regulations when such words appear in section 311 of the Act.

Response. A change has been made. In regulating, the Secretary tried to clarify the language of the Act without changing its meaning. However, based on concern raised during the comment period, § 401.73(a)(2)(v) has been changed to adhere to the language of the Act. The phrase "including resource management" has been added to § 401.73(a)(2)(v) immediately following the word "management."

Section 401.75 Special Programs—Adult Training, Retraining, and Employment Development Program.

Comment. One commenter objected to the use of "shall" in § 401.75, which provides that States "shall" conduct adult training, retraining, and employment development projects, services, and activities. The commenter suggested that "shall" is unnecessarily restrictive, and should be replaced with "may."

Response. No change has been made. In establishing the Adult Training, Retraining, and Employment Development Program, Congress clearly intended to require that particular purposes be achieved and individuals be served. The program is to be carried out in accordance with the State plan, which must specify those adult training, retraining, and employment development projects, services, and activities to be carried out.

Comment. One commenter pointed out that the Act requires, under section 322(b)(1)(D), that the programs under § 401.75(d) (1) and (2) serve the individuals identified in § 401.75(a). The commenter believed that the regulations incorrectly limit that requirement to programs under paragraph (d)(2).

Response. A change has been made. The requirements in § 401.75(d) to serve individuals identified in § 401.75(a) now clearly applies to programs under paragraphs (d) (1) and (2).

Comment. One commenter pointed out that, in describing authorized services and activities under the Adult Training, Retraining, and Employment Development Program, section 322(b)(1)(E) of the Act contains the words "cooperative education programs" while § 401.75(e) of the proposed regulations did not. The commenter asked why the statutory language was not included in the regulations.

Response. A change has been made. Section 401.75(e) has been changed to reflect more accurately the language of the Act.

Comment. One commenter thought the word "minorities" was inadvertently omitted from § 401.75(g).

Response. No change has been made. Section 322(b)(1)(G) of the Act, on which § 401.75(g) of the regulations is based, does not contain the word "minorities."

Comment. One commenter pointed out that, in describing services and activities authorized under the Adult Training, Retraining, and Employment Development Program, section 322(b)(1)(H) of the Act speaks to "related and additional services" while § 401.75(h) of the proposed regulations referred to "and additional related services." The commenter asked why the statutory language was not used in the regulations.

Response. No change has been made. The language was modified because it is the Secretary's view that Congress did not want to imply that additional unrelated services were authorized. If services are "unrelated," they are not considered as "required to effectively carry out the purposes of this part" as stated in section 322(b)(1)(H) of the Act.

Comment. One commenter suggested that the phrase "as defined in § 400.4(b)," be added after the words "apprenticeship training programs" in § 401.75(j).

Response. A change has been made. The phrase "as defined in § 400.4(b)" has been added after the words "apprenticeship training programs" in § 401.75(j) in order to clarify the reference to apprenticeship training programs.

Section 401.76 Special Programs—Comprehensive Career Guidance and Counseling Program.

Comment. One commenter objected to the stipulation, in § 401.76(a)(1), that comprehensive career guidance and counseling programs for vocational education students must be "organized and administered by certified counselors." The commenter felt that when the nation's extremely high student to counselor ratio is considered, it becomes obvious that counselors must continue to enlist the help of vocational education teachers if they are to meet student needs.

Response. No change has been made. While the Act clearly requires that career guidance and counseling programs for vocational education students be organized by and under the direction of certified counselors, there is no prohibition against certified counselors enlisting the aid of teachers or other assistants to carry out their programs.

Comment. One commenter asked why § 401.76(b)(2)(iii) used the phrase "reflect the collaboration" of the family, the community, business, industry, and labor while section 332(b) of the Act uses the phrase "enlist the collaboration . . ."

Response. A change has been made. The word "enlist" has been substituted for the word "reflect" in § 401.76(b)(2)(iii) in order to reflect more closely the language of the Act.

Comment. A commenter felt that the language of § 401.76(c), requiring that collegiate level counselor education programs conducted by university personnel be organized and administered by certified counselors, is not in keeping with the language of the Act.

Response. No change has been made. Section 332(a) of the Act requires that programs under Part D of Title III of the Act be "organized and administered by certified counselors." However, the Secretary does not interpret the language of the statute to require that all instruction in counseling necessarily be provided by certified counselors.

Comment. One commenter pointed out that § 401.76(c)(2)(ix) referred to "State and local . . . supervision." The and local administration" while section 332(b)(2) of the Act refers to "State commenter asked why the statutory language was not used in the regulation.

Response. A change has been made. The words "including supervision" have been added to § 401.76(c)(2)(ix) immediately following the word "administration." The Secretary believes that Congress did not intend to prohibit the use of funds for State and local administration, which includes supervision.

Section 401.79 Special Programs—special considerations under the Industry-Education Partnership for Training in High-Technology Occupations Program.

Comment. One commenter pointed out that, in requiring an applicant to demonstrate its special efforts to provide outreach, section 343(b)(4) of the Act uses the phrase "the commitment to serve all segments . . ." while § 401.79(d) of the proposed regulations used the phrase "the extent to which the project will . . ." The commenter asked why the statutory language was changed.

Response. A change has been made. The words "The extent to which the

project will serve . . ." have been deleted from § 401.79(d) and have been replaced by the words "The commitment to serve . . ." in order to reflect more accurately the language of the Act.

Section 401.80 Special Programs—fiscal requirements under the Industry-Education Partnership for Training in High-Technology Occupations Program.

Comment. One commenter asked why § 401.80(b) of the proposed regulations referred to "local" while section 343(a)(1) of the Act uses the term "eligible recipients."

Response. A change has been made. In order to reflect more closely the language of the statute, the phrase ". . . at both the State and local level" has been deleted from § 401.80(b) and replaced with the phrase ". . . by both the State and eligible recipients."

Section 401.90 Conditions a State must meet—reserving funds under the basic State grant.

Comment. Several commenters noted that section 113(b)(4) of the Act appears to require the State to distribute all funds for handicapped and disadvantaged individuals, under Title II, Part A, to eligible recipients, with none of these funds being retainable at the State level. The commenters felt that States should take funds for handicapped and disadvantaged individuals out of the allotment before reserving funds for State administration. They recommended that § 401.90 be modified to reflect this interpretation.

Response. No change has been made. Although the Act lacks clarity on this issue, the Secretary believes the regulation reflects the intent of Congress. Section 113(b)(4) of the Act must be read in connection with section 102 of the Act, which allocates the funds in the basic State grant among State administration, the Vocational Education Opportunities Programs authorized by Part A of Title II of the Act, and the program improvement, innovation, and expansion activities authorized by Part B of Title II. In general, section 102 of the Act allocates 57 percent of the basic grant to Part A, 43 percent to Part B, and up to 7 percent for State administration. In addition, section 202 of the Act reserves all the basic grant funds available for Part A for six specified populations, including handicapped individuals and disadvantaged individuals, in precisely established proportions. To preserve the integrity of these various fund distribution requirements and the carefully wrought balance of interests they represent, the Secretary has interpreted the Act to require that the States reserve up to 7 percent for State administration prior to alloting the 57 percent and 43 percent for Parts A and B, respectively. This interpretation is consistent with the language of section 113(b)(4) of the Act because all the funds "available" for handicapped and disadvantaged individuals, after the reservation of funds for State administration, continue to flow to eligible recipients. In addition, the Secretary's interpretation promotes administrative convenience for the States and reflects the necessity for State-level administrative activity in connection with local programs for handicapped and disadvantaged individuals.

Section 401.91 Conditions a State must meet—reserving funds for State administration.

Comment. One commenter expressed the view that the Secretary should specify in § 401.91 that the 20 percent reserved for State activities under Title II of the Act is to be reserved from Part B of Title II.

Response. No change has been made. Section 113(b)(4) of the Act permits the funds for State activities to be derived from both Parts A and B of Title II of the Act.

Comment. One commenter expressed the view that the 7 percent limitation on State administrative expenditures for the Title II allotment will place severe restrictions on State leadership activities in many States; particularly the smaller States. Another commenter felt that administrative costs should be taken from the Title II, Part B funds. Still another commenter felt the final regulations should prohibit States from using the 3.5 percent set-aside or the 8.5 percent set-aside for administrative support of the § 401.13 personnel.

Response. No change has been made. Section 102 of the Act clearly limits the funds available for State administration to 7 percent of the basic State grant (excluding any additional cost for the sex equity coordinator). The Secretary interprets sections 102 and 113(b)(4) of the Act to require the States to first reserve the amount for State administration and then to allocate funds for Title II, Part A and Part B according to the required percentages. Therefore, funds for State administration do not come out of funds reserved under Title II, Part A for single parents and homemakers or programs designed to eliminate sex bias and stereotyping, respectively.

Section 401.92 Conditions a State must meet—reserving funds under the Vocational Education Opportunities Program.

Comment. Several commenters suggested adding a provision that would allow funds to be diverted from Title II, Part B of the Act to supplement those reserved in Title II, Part A for vocational education programs serving single parents and homemakers and programs designed to eliminate sex bias and stereotyping in vocational education.

Response. No change has been made. Funds under Title II, Part B of the Act must be used to expand, improve, modernize, or develop quality vocational education programs. To the extent that the State vocational education program includes improving, expanding, modernizing, or developing vocational education programs serving single parents and homemakers or progams designed to eliminate sex bias and stereotyping, Title II, Part B funds may be used for such programs.

Comment. Several commenters suggested adding language to prohibit States from diverting funds for the sex equity and single parent and homemaker programs to other purposes. To prevent the diverting of funds, the commenters recommended that § 401.13 be changed to include a requirement that the expenditure and award of funds under the sex bias and single parents and homemakers programs be determined by the "sex equity coordinator" only.

Response. No change has been made. The Secretary does not believe that additional regulatory language is necessary. The Act and the regulations clearly reserve specific amounts for vocational education programs serving single parents and homemakers and programs designed to eliminate sex bias and stereotyping in vocational education; the amounts may not be diverted. In addition, the Act and the regulations require that the "sex equity coordinator" administer these programs.

Comment. A commenter suggested that the regulations clarify that the one percent set-aside for criminal offenders in § 401.92(f) is not the only source of funds under the Act in which correctional institutions or agencies can receive funding for vocational education programs and services.

Response. No change has been made. The Secretary believes that Congress intended that criminal offenders or any of the special groups covered by sections 201(b) and 202 of the Act be restricted to receiving services under Title II, Part A of the Act exclusively; additional regulations are not believed

necessary. For example, the regulations in § 401.60(a)(14) (Proposed § 401.60(a)(23)) stipulate that funds from Title II, Part B of the Act may be used for improvement or expansion of any activities authorized under Title II, Part A of the Act which would accomplish the purposes of Title II, Part B.

Section 401.93 Conditions a State must meet—administrative cost requirements.

Comment. One commenter asked for the statutory authority for the "necessary and reasonable" language as it relates to administrative costs in § 401.93 (a)(2) and (b).

Response. No change has been made. The Secretary believes the "necessary and reasonable" cost principle is implicit in the statute. This language is consistent with Department-wide regulations (34 CFR Part 74, Appendix C) on cost principles, and well established Departmental practice.

Section 401.94 Conditions a State must meet—cost sharing requirements.

Comment. One commenter requested that the matching requirements be made clearer and separately placed under each program rather than being grouped in § 401.94.

Response. No change has been made. The Secretary believes the regulations are clearer when organized by topics rather than by programs.

Comment. Several commenters were concerned that community-based organizations (CBOs) would not be able to provide the required 50 percent non-Federal match for administration of projects and activities in § 401.94 (b)(1)(ii) an (b)(2). The commenters felt that the 50 percent matching requirement should be deleted for CBOs.

Response. No change has been made. The matching requirements in § 401.94 (b)(1) (ii) and (b)(2) reflect the statute.

Comment. Several commenters pointed out that the expenditure requirements in § 401.94(b)(1)(iii) would force the closing of a substantial number of separate programs for handicapped and disadvantaged individuals because these programs can no longer be totally funded with Federal funds. The commenters requested that § 401.94 be changed to permit Federal funds to be used to pay the total cost of separate programs.

Response. No change has been made. Section 201(c) of the Act requires that Federal funds be used to pay no more than 50 percent of the expenditures for handicapped or disadvantaged individuals in separate programs which exceed the average per-pupil expenditures for regular services and activities. However, under Title II, Part B of the Act, the entire costs of such separate programs may be paid from Federal and matching funds as long as the requirements in §§ 401.59 and 401.60 are met.

Comment. One commenter requested that the matching requirement be waived by regulation for expenditures for modern machinery and tools acquired under section 201(d)(2) of the Act.

Response. No change has been made. Section 502(a)(3)(A) of the Act requires that expenditures of Federal funds for disadvantaged individuals under Part A of Title II of the Act be matched. It should be noted, however, that the matching requirements applies in the aggregate and need not be applied on a project-by-project basis.

Comment. Several commenters objected to the exclusion of in-kind contributions in meeting cost-sharing requirements under Title II, Part B of the Act. The commenters suggested changing § 401.94(c) to read: "A State may not use the value of in-kind contributions to satisfy cost-sharing requirements under the State Vocational Education Program, except under the Vocational Education Improvement, Innovation, and Expansion Program."

Response. No change has been made. Congressional intent regarding the use of in-kind contributions under the Act is described in Item 236 of the Conference Report, House Report No. 98–1129, 98th Cong. 2d Sess. p. 98, which clarifies that in-kind contributions may not be counted toward matching requirements. Under Title III, Part E, Industry-Education Partnership Program, the business and industrial share of the costs required by section 342(b)(3) of the Act may be in the form of cash or in-kind contributions (such as facilities, overhead, personnel, and equipment) fairly valued. The remainder of the non-Federal match for this program may not not be met by in-kind contributions.

Section 401.95 and Section 401.96 Conditions a State must meet—allocations for handicapped and disadvantaged individuals.

Comment. Several commenters strongly supported the interpretation that the allocation of funds be based on "participating" eligible recipients. Another commenter asked why the word "participating" was added to the term "eligible recipients" in §§ 401.95 and 401.96.

Response. No change has been made. The term "participating eligible recipients" was used in order to eliminate the unnecessary administrative burden States would face in having to make pupil counts in, and allocate funds to, eligible recipients that did not wish to participate in the programs (assuming the data were available from such disinterested eligible recipients). Also, allocations for disinterested eligible recipients would then have to be reallocated to those eligible recipients that did wish to participate, thus creating an additional administrative burden on States.

Comment. One commenter noted that §§ 401.95 and 401.96 appear to be silent on the reallocation of funds for handicapped and disadvantaged persons. The commenter felt that any funds returned to the State by an eligible recipient should be reallocated on a discretionary basis to areas with demonstated unmet needs. The commenter recommended that the regulations allow States to reallocate these funds without applying the formulas.

Response. No change has been made. Sections 401.95 and 401.96 describe the formulas for initially allocating Title II, Part A funds reserved for handicapped and disadvantaged individuals to participating eligible recipients. The regulations do not prohibit the reallocation of any of these funds which are not needed by a participating eligible recipient to other participating eligible recipients which do have a need for them. The Secretary interprets section 203(a) (1) and (2) of the Act to permit reallocation of unneeded funds from one participating eligible recipient to others either according to the statutory allocation formulas or to those participating eligible recipients which the State determines have the greatest need for additional funds.

Comment. One commenter requested that allocations for handicapped and disadvantaged individuals under section 203(a) of the Act be based on the most recent data available rather than on counts made in the program year preceding the year in which the allocation is made. The commenter pointed out that such a change would accommodate the different data collection methods used by the States.

Response. No change has been made. Section 203(a) of the Act requires that the allocations be based on counts made in the year prior to the year of determination.

Comment. Several commenters expressed the view that the distribution requirements under §§ 401.95 and 401.96 will severely limit the services that can be provided in sparsely populated areas or to special residential schools. The commenters asked that a sparsity factor be included in these regulations.

Response. No change has been made. The distribution requirements are mandated by section 203(a) of the Act.

Comment. Several commenters were concerned that the criteria for funds identifed in §401.96(a)(2) could penalize LEAs that have been unable to obtain adequate vocational education funding in the past, and, therefore, have not been able to serve their economically disadvantaged population with vocational education programs.

Response. No change has been made. The requirement in § 401.96(a)(2) that the distribution of funds be based, in part, on the number of economically disadvantaged individuals served in vocational education programs reflects the requirements of section 203(a)(2)(B)(ii) of the Act.

Comment. Several commenters expressed the view that § 401.96(b) of the regulations establishes a method for determining a minimum expenditure level for individuals with limited English proficiency which could result in an inappropriate or inequitable minimum expenditure level for this population.

Response. A change has been made. In general, section 203(a)(3) of the Act requires eligible recipients to support vocational education programs for persons with limited English proficiency from their allotments of Title II, Part A funds reserved for disadvantaged individuals in the same proportion as the number of persons with limited English proficiency "served" by the eligible recipient in the preceding year bears "to the population of the State." In an attempt to give the language of the statute a reasonable meaning, in the proposed regulations the Secretary interpreted "served" to mean served in vocational education and interpreted the reference to the State's population to mean the total population of persons with limited English proficiency served in vocational education by all participating eligible recipients. The Secretary agrees that, as the commenters pointed out, the ratio between the number of persons with limited English proficiency served in vocational education by an eligible recipient and the number of such persons served in vocational education throughout the State is not always an equitable or appropriate means of allocating an eligible recipient's funds reserved for disadvantaged persons, including persons with limited English proficiency. For example, the ratio described in the proposed regulation does not accurately reflect the relative numbers of limited English proficient persons and otherwise disadvantaged persons in an eligible recipient who have a need for vocational education. Several of the commenters invited the Secretary to, in effect, rewrite section 203(a)(3) of the Act in order to establish a more equitable means of allocating funds for persons with limited English proficiency. While the Secretary is not authorized to rewrite the statute, the Department has forwarded to Congress a legislative proposal which would amend section 203(a)(3) and establish a more equitable ratio.

In the meantime, the final regulations essentially repeat the language of section 203(a)(3). The Secretary continues to believe that the interpretation reflected in the proposed regulation is a reasonable one, which the States are free to adopt, where equitable and appropriate; however, the States may adopt other reasonable interpretations, that are consistent with the purposes of the Act, as well. It should also be pointed out that the Secretary interprets section 203(a)(3) to establish a minimum funding requirement for persons with limited English proficiency from Title II, Part A funds reserved for disadvantaged individuals. Therefore, a State would be permitted to adopt the interpretation provided in the proposed regulations, but spend additional funds for programs for persons with limited English proficiency when equitable and appropriate to do so. In addition, a new State plan requirement has been added, § 401.19(b)(14), which requires States to describe in their State plans how they will implement § 401.96(b).

Comment. One commenter suggested adding language which targets funds for programs serving limited-English proficient individuals according to incidence of ethnicity in the eligible population.

Response. No change has been made. The Act does not authorize such a provision. Individuals with limited English proficiency, by virtue of their limited language proficiency, are considered academically disadvantaged. Disadvantaged individuals require special services and assistance in order to enable them to succeed in vocational education programs. The Secretary expects that individuals enrolled in such programs shall be appropriately served, regardless of the incidence of their ethnic group in the eligible population.

Comment. One commenter recommended that § 401.96(b) be modified by adding the provision that no eligible recipient be required to spend more of its disadvantaged allocation for limited-English proficient individuals than it does on disadvantaged persons not so classified.

Response. No change has been made. The Act does not authorize such a provision.

Section 401.97 Conditions a State must meet—matching requirement for programs for handicapped and disadvantaged individuals.

Comment. A number of commenters objected to the requirement in § 401.97 that the non-Federal share of the cost of projects, services, and activities for handicapped and disadvantaged individuals under Part A of Title II be shared equitably from State and local sources. The commenters maintained that the State should have the discretion to assume 100 percent of these costs in order to promote local participation. Other commenters were pleased that no definition of "equitably" was provided.

Response. No change has been made. Section 401.97 of the regulations sets forth the requirements of section 502(b) of the Act. It should be noted, however, that section 502(b) of the Act and § 401.97 of the regulations permit a State to assume 100 percent of the non-Federal costs for handicapped and disadvantaged individuals if the State determines that these costs cannot be reasonably provided from local sources.

Comment. Several commenters expressed concern over the adverse effects on programs for handicapped and disadvantaged individuals that a strict interpretation of the matching requirement might have. These commenters also expressed concern in cases where the total burden of meeting the matching requirement was assumed at the State level.

Response. No change has been made. The Secretary believes that the matching requirement is sufficiently flexible. In addition, the determination of what constitutes an equitable sharing of the matching requirement, between the State and local funds, is made in the first instance by the State.

Section 401.98 Conditions a State must meet—use of community-based organizations under the Vocational Education Opportunities Program.

Comment. One commenter asked why § 401.98 of the proposed regulations used the phrase "each local educational agency or other eligible recipient" while section 203(a)(4) of the Act reads "each local educational agency shall use to the extent feasible, community-based organizations . . . in addition to other eligible recipients, . . ."

Response. No change has been made. The Secretary believes the language of the regulations accurately expresses the intent of Congress. Community-based

organizations are not defined as eligible recipients in section 521(14) of the Act as is implied by the language of section 203(a)(4). In addition, if read literally, section 203(a)(4) of the Act would seem to exempt eligible recipients other than local educational agencies from the requirement to use community-based organizations when appropriate. Yet the apparent intent of Congress was to expand the use of community-based organizations by eligible recipients under the Act.

Section 401.101 Conditions a State must meet—equal access provisions.

Comment. One commenter suggested that minimum guidelines should be established for determining "equal access" for handicapped and disadvantaged individuals.

Response. No change has been made. Adequate guidance for providing equal access to handicapped and disadvantaged individuals is provided in § 401.101. This includes pre-enrollment information about available opportunities, and once enrolled, an assessment of interests and abilities, adaptation of curriculum, instruction, and facilities, and the provision of guidance and counseling.

Comment. Several commenters suggested changing the requirement in § 401.101(a) that local educational agencies provide information about vocational education program eligibility and opportunities to handicapped children and their parents. Some commenters recommended that the regulations require instead that postsecondary institutions use their allocation of special needs funds to provide such information to handicapped and disadvantaged students. One commenter recommended adding a requirement to provide the information to adult handicapped and disadvantaged students.

Response. No change has been made. The Act does not authorize the rules requested by the commenters. Section 204(b) of the Act imposes "outreach" obligations only on local educational agencies.

Comment. One commenter recommended adding to § 401.101(a) a minimum age level for providing information to handicapped children and their parents about opportunities and eligibility requirements for vocational education programs. The commenter suggested that because many handicapped students might be in ungraded classes and never formally reach "the ninth grade," an age requirement would more fully address the intent of Congress.

Response. No change has been made. Regardless of whether students are in graded or ungraded classes, the State must meet its obligation of providing handicapped students and their parents with program information one year in advance of when the student may appropriately enter vocational education, but in no event later than the beginning of the ninth grade. Where students are enrolled in ungraded classes, the State must still comply with the law, by informing handicapped students and their parents about vocational education opportunities and eligibility requirements at least one year before the student is eligible to enter the appropriate vocational education program.

Comment. Several commenters suggested clarifying § 401.101, which requires local educational agencies to provide handicapped and disadvantaged students and their parents with information concerning eligibility and opportunities in vocational education programs. The commenters suggested adding examples of the kinds of information to be provided and a statement that the information may be provided more than once.

Response. No change has been made. The Secretary believes the Act and regulations are sufficiently clear as to the type of information that must be provided to students and parents, and does not wish to establish possibly inflexible rules in this area. In addition, while the Act and regulations specify when the information must be provided, they do not preclude its repetition.

Comment. One commenter asked why § 401.101 departs from the language of the Act. Section 204(b) of the Act provides that local educational agencies shall, "with respect to" funds reserved under the basic State grant for handicapped and disadvantaged students, provide information to such students and their parents concerning vocational education opportunities. Section 401.101(a) of the proposed regulations provides that each local educational agency that receives funds reserved for handicapped or disadvantaged students shall use funds to provide the required information.

Response. No change has been made. The Secretary believes § 401.101(a) correctly interprets the intent of Congress. The phrase "with respect to" is ambiguous. Broadly speaking, it might be read to mean that the receipt of Federal funds triggers the local educational agency's obligation to provide the required notice. On the other hand, it might be read to mean the recipient must use the Federal funds to provide the information. The Secretary believes that the latter interpretation is the more plausible one. The legislative history to section 204(b) of the Act indicates that while Congress intended to overcome the "lack of proper information regarding what vocational education has to offer," Senate Report No. 98–507, 98th Cong. 2d Sess. p. 18, handicapped and disadvantaged students, it did not intend to impose affirmative obligations upon local educational agencies apart from the use of funds under the Act. It is the Secretary's interpretation of section 204(b) of the Act that if the local educational agency is already providing the required information with non-Federal resources, it need not, of course, use the Federal funds available for those purposes to duplicate those expenditures.

Comment. One commenter suggested adding to § 401.101 a requirement that the set-aside monies shall be used in compliance with the matching and excess cost requirements under the law. The commenters expressed the concern that without such language some districts may decide that they can circumvent the matching and excess cost requirements by using set-aside dollars for evaluation, counseling, and other similar activities.

Response. No change has been made. Paragraph (b)(2) of § 401.101 provides that funds must be used under that section in a manner that is "consistent with the regulations in this Part," including matching and excess cost requirements.

Section 401.102 Conditions a State must meet—Consumer and Homemaking Education Program.

Comment. Several commenters felt that the word "projects" was erroneously inserted in § 401.102 in lieu of the word "programs" as found in sections 312 (a), (c), and 313(a) of the Act.

Response. No change has been made. The word "projects" simply connotes an undertaking by an eligible recipient within the program area of consumer and homemaking education. (See 34 CFR 77.1(c)—definition of "project.")

Comment. One commenter cited a colloquy on the House floor during which an understanding was reached by the participants in the colloquy that the 6 percent cap on "leadership" as set forth in sections 313(b) and 333(b) of the Act did not apply to State leadership activities involving direct services to local programs under the Consumer and Homemaking and Guidance and Counseling Programs. Items 50 and 53 of the Conference Report which limit

"administration" to 6 percent for these programs were also referred to in the cited colloquy. The commenter asked that the exclusion applying to "leadership" activities be included in the regulations.

Response. No change has been made. The language of the law is at odds with the agreement reached in the colloquy, 130 Cong. Rec. H. 11420 (daily ed. Oct. 4, 1984), and with the language in Items 50 and 53 in the Conference Report, House Report No. 98-1129, 98th Cong. 2d Sess. pp. 71, 72. When the language of the law is clearly at odds with the legislative history, the Secretary must be bound by the language of the law. However, the Secretary believes that congressional intent is established by the language of Items 50 and 53 with regard to the category of expenditures to which the 6 percent cap applies for these programs. Consequently, the Secretary has offered a technical amendment to sections 313(b) and 333(b) of the Act which would strike the reference to "leadership" in these sections and substitute a reference to "administration."

Comment. Several commenters expressed the view that for a proper interpretation of the Act, the term "program" should be changed to "part" in § 401.102(b)(2).

Response. No change has been made. "Program" refers to the consumer and homemaking education program authorized by Title III, Part B of the Act.

Comment. One commenter requested that § 401.102(b)(2) be modified by inserting the phrase "and/or consumer education" after "home economics."

Response. No change has been made. The term "home economics" includes both consumer and homemaking education.

Section 401.103 Conditions a State must meet—Adult Training, Retraining, and Employment Development Program.

Comment. Numerous commenters wanted the word "may administer" in § 401.103(b) changed to "shall administer the programs for single parents and homemakers authorized by this section."

Response. No change has been made. While section 3(b)(3)(B) of the Act reserves funds under Title III, Part C for programs serving single parents and homemakers, section 111(b)(1)(A) of the Act requires that the sex equity coordinator administer only the programs for single parents and homemakers described in section 201(f) of the Act and the programs to eliminate sex bias and stereotyping in vocational education described in section 201(g) of the Act. However, the regulations continue to clarify that the sex equity coordinator may administer the programs for single parents and homemakers under Title III, Part C.

Section 401.110 State administrative responsibilities—Vocational Education Data System.

Comment. Several commenters suggested data requirements for inclusion in the new national Vocational Education Data Reporting and Accounting System mandated in section 421(a)(1) of the Act.

Response. No change has been made. The regulations do not include any rules governing data requirements for the Vocational Education Data Reporting and Accounting System. The Department is currently studying statistical methodologies that may be employed to collect data. Regulations for this activity, if necessary, will be developed and promulgated at a later date.

Section 401.111 State administrative responsibilities—State occupational information coordinating committee.

Comment. One commenter suggested that § 401.111(a) be changed to require that a State Occupational Information Coordinating Committee (SOICC) include a community-based organization or opportunities industrialization center representative as a SOICC member.

Response. No change has been made. The five members of the SOICC are all statutorily mandated by section 422(b).

Section 401.120 Enforcement procedures—procedures used by the Secretary.

Comment. One commenter asked why pertinent statutory requirements are cross-referenced in §§ 401.120 and 401.121 instead of being spelled out.

Response. No change has been made. The Secretary does not publish statutory provisions when references suffice. Moreover, these provisions are rarely invoked and require no regulatory interpretation.

Part 401—General

Comment. Numerous commenters wanted the regulations amended by inserting the term "sex equity coordinator" wherever there is a reference to the "person described in § 401.13."

Response. No change has been made. While the Secretary recognizes that the term "sex equity coordinator" is commonly used to refer to personnel described in § 401.13, the Secretary does not believe it is necessary to regulate such a matter.

Comment. Several commenters suggested expanding the role and responsibilities of the person described in § 401.13 by amending several sections of the regulations. In § 401.18(a) the commenters wanted to require the State board to meet with and utilize the person described in § 401.13. In § 401.19(a)(19)(i) commenters wanted to require the active participation of the person described in § 401.13(a) in the design of Adult Training, Retraining, and Employment Development Programs.

Response. No change has been made. The Act and regulations are quite specific concerning the duties and responsibilities of the person described in § 401.13(a), including how that person will assist the State board in carrying out the purposes of the Act. Clearly, States may choose to involve this person in the areas raised by the commenters.

Comment. Several commenters suggested standards of professional qualification for vocational education leadership. Qualifications that were suggested included requiring the State director and staff to be "bona fide" vocational educators. Other commenters suggested requiring vocational student organizations to be supervised by vocational teachers qualified in the occupational area of the student organization.

Response. No change has been made. Under the Act, States are responsible for administering their vocational education programs. The Secretary believes that States will use appropriately qualified personnel for administration, instruction, and other vocational education activities and services and that regulations in this area are not necessary.

Comment. A commenter felt that the regulations should ensure the development of postsecondary programs in agriculture, especially in those States where such programs are not in place, and should establish criteria to ensure that postsecondary programs build upon the secondary vocational agriculture programs. The commenter also suggested that the regulations permit the use of funds for preservice and inservice training of postsecondary teachers.

Response. No change has been made. Funding under the Act for postsecondary programs in agriculture, or any other occupational fields, should be based on the results of the State needs assessments performed as part of the development of the State plan, (with particular reference to labor market needs of the State) as required by § 401.18(c). It should also be noted that § 401.18(c) requires such assessments to include "the capacity of programs to

facilitate entry into, and participation in, vocational education, and to ease the school-to-work and "secondary-to-postsecondary transitions." Funds under Title II, Part B and under Title III, Part C, may be used for both preservice and inservice training of postsecondary vocational and technical teachers, while those under Title II, Part A may be used for inservice training.

Comment. Several commenters expressed concern that the regulations do not emphasize technical competence in a vocational field as a condition of membership for either the National Council on Vocational Education or the State Council on Vocational Education. The commenters stated that "members insensitive to the needs of large segments of the economy could make massive errors in judgement."

Response. No change has been made. The Secretary believes that neither the National Council on Vocational Education nor the State councils were intended to provide, from their memberships, detailed advice on the technical content of occupations. On the other hand, the Act does authorize these councils to obtain whatever technical competence they require to meet their advisory responsibilities. Section 431(c)(3) and (4) of the Act authorizes the chairperson of the National Council to "procure the services of experts and consultants" and to "accept voluntary and uncompensated services of professional personnel, consultants, and experts, notwithstanding any other provision of the law." Section 112(e) of the Act states that, "Each State council is authorized to obtain the services of such professional, technical, and clerical, personnel as may be necessary to enable it to carry out its functions under the Act. . . ." Finally, the State board is required by section 111(d) of the Act to establish in consultation with the State council, "a limited number of technical committees to advise the council and the board on the development of model curricula to address State labor market needs."

Comment. One commenter suggested that the regulations should allow for postsecondary institutions to use funds to provide preservice and inservice education.

Response. No change has been made. Under § 400.4(b), postsecondary institutions are eligible recipients. As such, they may use funds as any other eligible recipients. Preservice and inservice training are among the activities for which eligible recipients may use Title II, Part B funds.

Comment. One commenter questioned the substitution of "program year" in the proposed regulations in a number of instances where "fiscal year" is used in the Act.

Response. No change has been made. "Program year" was substituted for "fiscal year" in a number of instances in the regulations in order to achieve consistency for expenditure, program operation, and reporting periods. The Act does not define the term "fiscal year," and requires States and eligible recipients to plan, operate programs, and expend funds on a program year basis. The Secretary does not believe that the Congress intended to preclude the States from using a consistent period for accounting for these expenditures.

Comment. Several commenters suggested a series of definitions, prohibitions, and additions which would substantially alter the State council membership, the State's responsibility to conduct needs assessments, and the administration and use of funds.

Response. No change has been made. In promulgating the regulations, the Secretary was guided by the vocational education policy set forth by Congress in section 6 of Pub. L. 98-524. The policy emphasizes minimal Federal interference in the administration of vocational education programs. Incorporating the suggested prescriptions and definitions would result in overregulation contrary to vocational education policy established by Congress.

Part 407—Bilingual Vocational Training Program

Section 407.10 Types of projects.

Comment. One commenter felt that the phrase "bilingual vocational training projects for individuals who are . . . available for education in a postsecondary educational institution," in § 407.10(a)(1) of the proposed regulations repeats the first part of the paragraph which refers to "individuals who have completed or left elementary or secondary schools."

Response. No change has been made. The phrase is statutory and refers to individuals who can participate in an educational program at a postsecondary educational institution.

Section 407.20 Application requirements.

Comment. One commenter asked the reason for adding the requirement in § 407.20(a)(3) (Proposed § 407.20(b)(3)) that the State's vocational education board comment on the relationship of the proposed project to the State program.

Response. No change has been made. Section 441(d)(2) of the Act requires that applications to the Secretary for awards under the Bilingual Vocational Training Program be submitted to the State board for review and comment. The Secretary believes it is reasonable to interpret this requirement as including comment on the relationship of the proposed project to the State's vocational education program.

Section 407.31 Selection criteria.

Comment. Several commenters suggested that the point weights for various criteria for the Bilingual Vocational Training Program are different than the point weights assigned to criteria for other national discretionary programs. In addition, one commenter was concerned that the criterion in § 407.31(c), entitled "program factors," is used only for the Bilingual Vocational Training Program and should be deleted from the regulations.

Response. No change has been made. While individual criteria may be weighted differently than similar criteria in other programs, the different weights reflect a variety of factors, including program emphasis and expectations. In addition, the Secretary reserves the right in § 407.30(d) to assign a "reserved 15 points" among the criteria in § 407.31 to emphasize different aspects of the application process. As for § 407.31(c), the Secretary feels that it is necessary to add these "program factors" in order to encourage competition and better proposals in this particular program.

Comment. One commenter recommended that § 407.31(c)(2)(i) include the following examples of key methodologies and techniques used in bilingual vocational training—

(a) Providing training and instruction in English and the native languages of the trainees;

(b) Providing job-related English-as-a-second-language instruction;

(c) Coordinating job-related English-as-a-second-language instruction with the occupational training; and

(d) Providing training and counseling to prepare trainees for working in an English language environment.

Response. A change has been made. For greater clarity, the suggested examples of methodologies and techniques have been incorporated in the regulations.

Comment. One commenter pointed out that there are few private sector organizations and firms (other than community-based organizations which often are sponsors of Bilingual Vocational Training Programs) which have the necessary expertise to justify their involvement in the *operations* of a project. The commenter recommended

that the criterion "private sector involvement" in § 407.31(h) be deleted.

Response. No change has been made. Including private sector involvement as a selection criterion reflects section 2(3) of the Act which states that it is a purpose of the Act to "promote greater cooperation between public agencies and the private sector in preparing individuals for employment." Although the criterion has not been deleted as suggested, it has been revised to provide additional flexibility. The references to the private sector have been replaced by the term "employers," whether public or private.

Comment. One commenter suggested that there should be a requirement for agencies to place a certain percentage of bilingual vocational training program students to motivate them to become self-sufficient members of society.

Response. No change has been made. The selection criteria in § 407.31(i) includes a requirement for information and documentation of the extent to which more than 65 percent of the trainees, upon completion of their training, will be employed in jobs related to their training or seeking additional training.

Comment. Several commenters expressed the view that a 10-point award is excessive for the selection criteria under § 407.31(i), "the extent to which more than 65 percent of the trainees will be employed in jobs related to their training upon completion of their training." One commenter also asked the specific statutory authority for this criteria.

Response. No change has been made. The purpose of this criterion (and the 10 point weighting) is to ensure that training supported under the Act is meaningful in terms of labor market demands. The Secretary has explicit authority under the Carl D. Perkins Vocational Education Act to issue reasonable regulations to ensure that the intent of the Act is carried out. (Refer to section 2 of Pub. L. 98–524)

Section 407.32 Selection of applications for funding.

Comment. One commenter suggested that §§ 407.32 and 408.32 should make the State board, rather than the Secretary, responsible for determining whether "the most highly rated applications are equally distributed among populations of individuals with limited English proficiency in the affected State."

Response. No change has been made. The suggested change would transfer to the State boards authority Congress vested in the Secretary. The regulations cannot change this statutory authority.

Part 408—Bilingual Vocational Instructor Training Program

Section 408.10 Types of projects.

Comment. One commenter suggested that § 408.10(b), which prohibits an award to an applicant which does not have an ongoing vocational training program, was inappropriate for inservice training projects. The commenter said that typically the instructors participating in such programs do not need additional vocational training, but need training on how to teach limited English proficient persons.

Response. No change has been made. The requirement is statutory.

Section 408.20 Application requirements.

Comment. One commenter recommended changing, in § 408.20(b)(4), the words "participating or to participate" to "enrolling or to enroll." The commenter felt that "participants" might be interpreted to include staff as well as students.

Response. A change has been made. The regulations clarify that, among other information, the application is to describe the minimum qualifications of "trainees."

Section 408.31 Selection criteria.

Comment. One commenter suggested adding the following criterion "Program Factors" to § 408.31 and assigning it 10 points:

Program Factors

(1) The Secretary reviews each application for information that shows the applicant's understanding of key factors.

(2) The Secretary looks for information that shows—

(i) An understanding of the major components and operations of a Bilingual Vocational Training Program for limited English proficiency trainees;

(ii) An understanding of the key methodologies and instructional techniques used in bilingual vocational training, including coordination of instruction;

(iii) Procedures for curriculum development and revision for limited English proficiency trainees;

(iv) Procedures for selecting and adapting instructional materials for limited English proficiency trainees;

(v) Procedures for evaluating the skills and needs of limited English proficiency trainees;

(vi) Provisions for coordination of project activities with local Bilingual Vocational Training Programs; and

(vii) That the project will be coordinated with the State board or agency designated or established under section 111 of the Act.

Response. No change has been made. The suggested criterion is more appropriate for programs in which students with limited-English proficiency are to be taught. However, to the extent appropriate, the criterion is covered by other criteria in § 408.31.

Comment. One commenter recommended a reduction in the maximum number of points for the criterion "Evaluation Plan" in § 408.31(f) (Proposed § 408.31(e)). The commenter felt that reducing the points would encourage very basic evaluations which are more useful to projects than elaborate evaluations.

Response. No change has been made. The Secretary does not believe that assigning a maximum of 10 points on the basis of the quality of the evaluation plan will necessarily result in excessively elaborate evaluations, but does believe that applicants should give considerable thought to developing a high quality plan.

Part 409—Bilingual Vocational Materials, Methods, and Techniques Program

Section 409.10 Types of projects.

Comment. One commenter pointed out that section 441(c)(1) of the Act provides for". . . development of instructional and curriculum materials, methods, or techniques . . ." as eligible activities while §409.10(b) of the proposed regulations included only "instructional and curriculum materials." The commenter asked why the other activities were not included.

Response. A change has been made. The words "methods, or techniques" have been added to § 409.10(b) immediately following the word "materials" in order to adhere more closely to the language in the Act.

Part 410—Indian and Hawaiian Natives Program

Section 410.10 Types of projects.

Comment. One commenter suggested that § 410.10(b) should not exclude the word "Hawaiian Natives" from the text which says that projects for Indians funded under this program are *in addition* to other provisions of the Act.

Response. No change has been made. The Secretary has followed the language of section 103(b)(3) of the Act in limiting this paragraph of the regulations to Indians. However, Hawaiian Natives are not excluded from participation in other programs authorized by the Act.

Section 410.31 Selection criteria.

Comment. Several commenters felt that the 65 percent job placement rate is an unrealistic criterion for the Indian and Hawaiian Natives Program. These commenters thought § 410.31(h)(1) should be revised to include a more appropriate criterion, such as "positive termination," which would include continued training.

Response. A change has been made. A principal purpose of job training is job placement, and the criterion is believed necessary to ensure that the training supported under this program is meaningful in terms of labor market demands. However, the Secretary agrees that the criterion should be made more flexible, and has changed the criterion so that trainees who pursue additional training that is related to their training under this program would be included as part of the 65 percent.

Comment. One commenter was concerned that there is no rationale for greater point weights being placed on a few of the Indian and Hawaiian Natives Program selection criteria in § 410.31 than are in other national discretionary programs.

Response. No change has been made. An absolutely consistent weighting of these criteria among different programs should not be expected in light of differing program emphases, requirements, and criteria. Also, in § 410.30, the Secretary has reserved 15 points which may be assigned among the criteria in § 410.31. The purpose of reserving 15 points for the Secretary's use is to preserve the capability of emphasizing one or more criteria in a particular competition, if the Secretary deems this to be desirable.

Comment. One commenter felt that the requirement, in § 410.31(g), for private sector involvement is unrealistic in isolated rural settings and does not reflect regional differences among Indian tribes. The commenter requested that private sector involvement be redefined as "community involvement" in such settings.

Response. No change has been made. Including private sector involvement as a selection criterion reflects section 2(3) of the Act which states that it is a purpose of the Act to "provide greater cooperation between public agencies and the private sector in preparing individuals for employment." Further, private sector involvement includes the involvement of employers, whether public or private, philanthropic groups, and community organizations.

Comment. One commenter suggested a change in the title of the selection criterion in § 410.31(h) for the Indian and Hawaiian Natives Program. The commenter pointed out that this particular criterion is labeled "Employment Opportunities" in the regulations for other national discretionary programs, but is called "Quality of Training" in § 410.31.

Response. A change has been made. For consistency, § 410.31(h) is now titled "Employment Opportunities."

Comment. One commenter asked what the basis was for requiring, in § 410.31(h)(2), that Indian tribes applying under the Indian and Hawaiian Natives Program provide information which shows that the employment for which training is provided is related to the tribal economic development plan.

Response. No change has been made. This provision was incorporated into the regulations in order to ensure that training under this program is consistent with current job needs and opportunities as reflected in the tribal economic development plan.

Section 410.32 Additional factors for declining an award.

Comment. One commenter suggested deleting the provision set forth in § 410.32(b) which provides that the Secretary can decline an award under the Indian and Hawaiian Natives Program if funding the project would create an inequitable distribution among Indian tribes or among organizations serving or representing Native Hawaiians.

Response. No change has been made. The Secretary believes it is reasonable to reserve the authority to avoid an inequitable distribution of awards. This provision of the regulations reflects long standing administrative practice under the predecessor program authorized by the Vocational Education Act.

Section 410.33 Hearings under the Indian Program.

Comment. One commenter noted that § 410.33, in providing an opportunity for hearings, only mentions Indians. The commenter suggested that Hawaiians be included in this provision.

Response. No change has been made. Section 410.33 of the regulations specifically refers to Indians because it derives from the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), as amended. See 25 U.S.C. 450f(b).

Part 415—Model Centers for Vocational Education for Older Individuals

Section 415.2 Eligible applicants.

Comment- One commenter expressed concern over the limited range of organizations eligible to apply under the Model Centers for Vocational Education for Older Individuals Program. The commenter suggested broadening eligibility to include "any public or private agency or organization serving older worker."

Response. No change has been made. Section 471(b) of the Act indicates that model centers are to be operated by eligible recipients. Section 251(14) of the Act defines eligible recipients as local education agencies and postsecondary educational institutions.

Section 415.10 Types of projects.

Comment. One commenter suggested that two additional requirements be included under § 415.10. They are:

(1) Encourage centers to utilize and coordinate services with other Federal programs including JTPA, Rehabilitation programs, and services provided through the U.S. Employment Service; and

(2) Work closely with private sector employers in the design of training programs and in the placement of older adults upon completion of training.

Response. No change has been made. The requirements in § 415.10 of the regulations have been taken directly from section 417(b) of the Act. Note, however, that the involvement of the private sector in the planning and operation of each project is one of the selection criteria used in evaluating each application.

Part 416—National Vocational Education Research Program

Section 416.1 Purpose.

Comment. One commenter suggested that the Department give more emphasis to guidance and counseling activities in the National Vocational Education Research Program.

Response. No change has been made. Section 416.1(d) of the regulations states that one of the four purposes of the National Vocational Research Program is to "authorize research activities which are readily applicable to the vocational setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education." In addition, the regulations contain authority to conduct research activities to benefit and meet the practical needs of guidance counselors. Section 416.10(i) permits research to be conducted in "any other aspect of vocational education that is specifically related to the Act," which could include research to meet the needs of guidance counselors.

Section 416.10 Types of projects.

Comment. Several commenters suggested additional research areas for inclusion in § 416.10. The commenters felt that such additions would more fully ensure that authorized research would be commensurate with the purposes of the Act. Suggested additions included particular areas of vocational education, such as agriculture; office occupations; improvement of teacher preparation; classroom teaching and learning; inservice education; program development; curriculum development and improvement; materials preparation; student selection; personnel development and retention; student placement; and diffusion and introduction of current and new subject matter, focusing on high technology and other industry trends.

Response. No change has been made. Section 416.10 lists eight possible areas of applied research, and is taken from section 402(a) of the Act. Several of these areas potentially encompass those suggested by commenters. For example, § 416.10(e) might include issues of classroom teaching and learning, improvement of teacher preparation, and others. The eight possible areas listed are not exclusive. As stated in § 416.10(i), applied research may be on "any other aspect of vocational education that is specifically related to the Act."

Part 417—National Center for Research in Vocational Education

Section 417.10 Activities carried out by the National Center.

Comment. Several commenters were concerned that § 417.10 changed the intent of the Act by using the word "may" instead of "shall" in describing how the National Center is to conduct research. In addition, one commenter recommended that the regulations require the National Center to subcontract research which focuses on the special populations identified in section 404(b) of the Act.

Response. No change has been made. The language of the regulations is consistent with the intent of Congress. The use of the word "may" in § 417.10 provides the National Center the option of conducting research and development projects either directly or through contracts with public agencies and public or private institutions of higher education. While research on special populations is required by section 404(b) of the Act, the Act does not require that such research be carried out by contract.

Comment. One commenter noted that section 404(b) of the Act permits the National Center for Research in Vocational Education to conduct projects, programs, and activities through subcontracts with other public agencies and public or private institutions of higher education. The commenter asked why this language was not included in the regulations.

Response. A change has been made. The phrase "with other public agencies and public or private institutions of higher education" has been added to § 417.10(a)(2) to more closely follow the language of the Act. In addition, the final regulations omits the reference to subgrants, in order to reflect more closely the language of the statute.

Comment. One commenter felt that § 417.10(b)(7) should be changed to include language on how the National Center for Research in Vocational Education is to carry out its responsibilities as a clearinghouse for information on contracts and subgrants made by the States.

Response. A change has been made. To clarify the National Center's responsibilities, the following language has been added to § 417.10(b)(7): "The National Center shall make available to the States, in a reasonable manner, abstracts on research, curriculum development, and personnel development projects."

Section 417.31 Selection criteria.

Comment. One commenter asked what is meant by the selection criterion, "philosophy of management" as it appears in § 417.31(b) and how will it be judged.

Response. No change has been made. The selection criterion, "philosophy of management," refers to the rationale and principles which form the basis for the applicant's management procedures, methods, and strategies. The intent of this criterion is to assist reviewers in selecting an applicant who has a prudent, realistic, and systematic procedure of managing the financial, human, and physical resources of a national center.

Section 417.41 Reports

Comment. One commenter asked for the statutory authority and rationale for the reporting requirements set forth in § 417.41 of the regulations.

Response. No change has been made. The Secretary feels that it is reasonable and prudent to include reporting requirements in the regulations because of the broad scope of work and funding level of the National Center. The Secretary has explicit authority to issue needed regulations under section 2(b) of Pub. L. 98–524.

Section 417.42 Activities performed during the fifth year of funding

Comment. One commenter asked for the statutory authority for § 417.42 of the regulations.

Response. No change has been made. The Secretary has the explicit authority to issue needed regulations under section 2(b) of Pub. L. 98–524. The provision is reasonable and prudent in the context of section 404(a)(2) of the Act, which required that there be a new competition for the National Center grant every five years.

Parts 407 Through 417—General

Comment. One commenter identified a number of sections in the regulations in which the term "cooperative agreements" was added. These sections are: §§ 407.2, 407.10, 408.2, 408.10, 409.2, 409.10, 410.2, and 412.10. The commenter asked for the authority for including this type of financial arrangement in these sections of the regulations.

Response. No change has been made. The authority for adding "cooperative agreements" as a permissible type of financial arrangement is the Grant and Cooperative Agreement Act of 1977. This Act authorizes the Secretary to use cooperative agreements as well as grants when the intent of the program is one of an assistance relationship between government and the recipient. Additionally, there is not language in the Act or its legislative history to indicate that cooperative agreements are prohibited.

Comment. One commenter recommended that the criterion "need," in §§ 407.31(a)(1) and 408.31(a)(1), be revised to clarify that applications should relate the need for the project to the needs of the local geographic area in which the project will be located.

Response. A change has been made. A project is not intended to operate in isolation from the community in which it is located. The description of need is intended to reflect the specific needs of the local community and relationship of the project to those needs.

Comment. One commenter pointed out that the Act mandates the Secretary to perform certain administrative activities in carrying out §§ 412.1, 415.1, and 416.1 of the regulations. The commenter asked why the appropriate sections of the regulations did not reflect the mandatory nature of the statutory requirements.

Response. No change has been made. The Secretary agrees that the Act imposes certain requirements on the Secretary. However, it is the Secretary's

policy not to regulate the administrative responsibilities of the Department.

Comment. One commenter noted that section 402(a) of the Act states that the research program may be conducted through the National Institute of Education (NIE) or another division of the Department. The commenter asked what the role of the NIE will be, and why this language was omitted in the regulations.

Response. No change has been made. The Secretary is currently considering the appropriate roles of various offices and divisions within the Department in carrying out the research activities as set forth in section 402 of the Act. The Department's administrative plan for carrying out these research activities is not included in the regulations because it is the Secretary's policy not to regulate the administrative responsibilities of the Department.

Comment. One commenter noted that section 402(b)(1) of the Act requires the Secretary to initiate certain leadership and inservice education activities. The commenter asked how these activities will be implemented and why these requirements were not mentioned in the regulations.

Response. No change has been made. The activities set forth in section 402(b)(1) of the Act will be implemented through the Office of Vocational and Adult Education. These requirements were not set forth in the regulations because the Secretary does not ordinarily regulate the administrative responsibilities of the Department.

Note.—This appendix is to be published in the Federal Register with the final regulations but it is not to be codified in the Code of Federal Regulations.

Appendix B—Summary of Questions and Answers

The following is a summary of the questions received on the notice of proposed rulemaking for the State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education published on January 25, 1985. Questions and answers are arranged in order of the sections of the final regulations to which they pertain. A "general" section has also been provided for questions which pertain to several sections of the regulations.

Part 401—State Vocational Education Program

Section 401.11 and Section 401.12 State board responsibilities.

Question. May the non-delegable functions of the State board, under section 111(a)(1) of the Act, be carried out by "contracting out" for the performance of such functions?

Answer. Yes. Contracting for services should not be confused with "delegation." While the six responsibilities listed in § 401.11 cannot be assigned to another State agency, the State board may contract for assistance in discharging any of these responsibilities. Whether this contracting involves another State agency, a private for-profit firm, or some other entity, such arrangements do not in any way relieve the State board of its responsibility.

Question. A large number of questions were received concerning the technical committees mandated by section 111(d) of the Act and further explained by § 401.12(b). It may prove helpful to summarize the answers to all of these questions in a single list.

Answer. The "technical committees" mandated by section 111(d) of the Act:

a. Are Statewide committees; local advisory committees cannot take their place—even if they are of the technical variety;

b. Focus on vocational program instructional content, rather than on all aspects of vocational education—as was the case with local advisory councils on vocational education, under the Vocational Education Act, or as is the case with the State Councils on Vocational Education, under the Carl D. Perkins Act;

c. Are not limited to advising on "technical" occupations (or those occupations ordinarily filled by "technicians") but may focus on any occupation or field generally accepted as being part of vocational and technical education; and

d. If funded by Federal funds under the Act, may be funded from Title II, Part B, monies, and such expenditures must be credited to the 20 percent reserved for State-level activities under Title II.

While a minimum of two technical committees must be established in each State, technical committees can be established for all occupational fields. Individual committees might cover an entire occupational field such as health occupations, or a specific occupation such as Licensed Practical Nurse.

Section 401.13 Duties of the sex equity coordinator.

Question. Is the person designated as the "sex equity coordinator" responsible for administering a State's vocational education programs for single parents and homemakers, sex equity programs, and other duties as described in § 401.13(a), regardless of institutional level of the programs, agencies to which programs are delegated, or previous program administration assignments?

Answer. Yes. The "sex equity coordinator's" administrative responsibility, which encompasses all the activities specified in § 401.13(a), cannot be altered or avoided. The "sex equity coordinator" is the responsible administrator, regardless of the institutional level of the programs, agencies to which programs are delegated, or previous program administration assignments. However, additional full-time or part-time staff may be assigned to assist in program administration.

Question. Can the "sex equity coordinator" designated under § 401.13 also be assigned other responsibilities, such as State Director of Vocational Education or Office of Civil Rights responsibilities?

Answer. No. The person designated as "sex equity coordinator" under § 401.13(a) must be assigned to work full time to carry out the responsibilities set forth in § 401.13(a). The "sex equity coordinator" cannot be assigned the general responsibilities of another office which would preclude full-time attention to sex equity coordination responsibilities. However, to the extent that activities carried out by other offices, such as the Office of Civil Rights, are consistent with the duties of the "sex equity coordinator" set forth in § 401.13(a), the "sex equity coordinator" may contribute to them.

Question. For organizational purposes, is the "sex equity coordinator" responsible to the State Director?

Answer. The "sex equity coordinator" is assigned within the appropriate agency as designated or established by the State board. That agency, consistent with State board policy and the requirements of the Act, defines the organizational responsibilities of the "sex equity coordinator".

Question. Does the minimum $60,000 expenditure stipulated in § 401.13(b) cover salary and expenses of the "sex equity coordinator" and both full-time and part-time support personnel, including existing staff whose activities directly relate to § 401.13(a)?

Answer. Yes. Section 401.13(b) provides for "necessary and reasonable staff support." Support staff may be both full-time and part-time, and may include existing State staff who spend a portion of their time in activities directly related to those listed in § 401.13(a).

Section 401.14 State council—establishment.

Question. Can States that have elected State Boards of Education opt to have the Governor appoint the State Council on Vocational Education?

Answer. No. If the State Board of Education is elected, that board is the only entity in the State with legal authority to appoint State council members.

Section 401.15 State council—membership requirements.

Question. Can the State council have more than 13 members as long as the proportional representation of the groups specified in section 112(a) of the Act is maintained?

Answer. No. The Act specifies that there be 13 members, no more and no less. Additional persons may serve the council as resource persons, but may not be voting members.

Question. May the postsecondary membership on the State council be extended to include higher education institutions such as four-year colleges?

Answer. Yes. The Secretary does not believe that Congress intended to prohibit representatives of higher education institutions from membership on State councils. Therefore, if a State regards an institution of higher education which provides vocational education as a "postsecondary vocational institution" within the meaning of section 112(a)(2) of the Act, it may include a representative of that institution as a member of its State council.

Section 401.16 State council—responsibilities.

Question. Must a State council perform the duties listed in § 401.16 each year?

Answer. No. Unless otherwise indicated in the regulations, the State council responsibilities described in § 401.16 must be performed at least once during the period covered by the State plan.

Question. When does the State council submit the report required under § 401.16(b)(9)?

Answer. Section 401.16(b)(9) requires the council to submit a written report every two years. In order to be consistent with the State plan cycle, States should submit the first report by March 31, 1987 covering program years 1984–85 and 1985–86. Subsequent reports should be submitted every two years on March 31.

Section 401.19 State plan—content.

Question. Can expenditures for Part D, Title III of the Act, Comprehensive Career Guidance and Counseling, be applied to the hold harmless assurance of § 401.19?

Answer. Yes.

Question. In identifying programs in the State plan for which Federal funds will be spent under § 401.19(b)(2), may programs be described using local descriptions or must U.S. Department of Education codes be used?

Answer. In order to provide uniformity in data reporting, the Secretary strongly encourages the use of Classification of Instructional Program (C.I.P.) Codes. See National Center for Educational Statistics (NCES) publication, *A Classification of Instructional Programs*, Gerald Malitz, February 1981.

Question. Section 113(b)(15) of the Act requires that annual expenditures for career guidance and counseling from allotments for Title II and Title III, Part D, will not be less than the expenditures for such guidance and counseling in the State for the fiscal year 1984 assisted under section 134(a) of the Vocational Education Act of 1963, as amended in 1976. Since Part D of Title III is referenced, does this imply that the expenditures in question are 100 percent Federal funds?

Answer. Yes. The hold-harmless requirement applies only to the expenditures of Federal funds under the Act.

Question. When the regulations state that the State board must "consult" with another agency or council, exactly what does "consult" mean?

Answer. The Secretary interprets the term to mean the seeking or giving of advice, usually through a direct exchange of views. It does not mean that the advice need be taken, or that the person being "consulted" is thereby granted power to approve in the matter under consultation.

Question. Can the entire 20 percent State agency share of Title II funds be taken from Part B of that title?

Answer. Yes. The only restrictions on where these 20 percent funds may be drawn are that funds must be taken from Title II and, as stated in section 113(b)(4) of the Act, all of the funds available for handicapped and disadvantaged persons under paragraphs (1) and (2) of section 202 of the Act must be distributed to eligible recipients.

Question. May a State establish different criteria for identifying eligible recipients in economically depressed areas, depending upon the type of eligible recipient?

Answer. Yes. Consistent with the purposes of the Act, and section 113(b)(5) in particular, a State does have the flexibility to adopt different criteria for identifying eligible recipients in economically depressed areas, according to the type of eligible recipient, e.g., for programs at the secondary or postsecondary level. Each criterion used, however, must be authorized by section 113(b)(5) of the Act.

Question. How are funds to be counted for eligible recipients located in economically depressed areas?

Answer. If the attendance boundaries of an eligible recipient lie entirely within an economically depressed area then all funds allocated to the eligible recipient under the Act may be classified as being expended within an economically depressed area. If the attendance boundaries of an eligible recipient lie partly within an economically depressed area, then a portion of the funds received under the Act by the eligible recipient may be classified as being expended within an economically depressed area. The proportion of funds that may be so classified must be based upon an auditable trail of funds to schools in the economically depressed area or derived as equal to the proportion that the enrollment from economically depressed areas is of total enrollment of that eligible recipient.

Section 401.22 Maintenance of fiscal effort.

Question. Is the maintenance of effort determination based on State expenditures reported for matching purposes or on all State expenditures for vocational education?

Answer. The maintenance of effort determination is based on all expenditures from State sources for vocational education.

Section 401.40 How a State carries out the State Vocational Education Program.

Question. Can statewide activities (e.g., a staff development project operated by a university) be accounted for under the 80 percent portion of the Title II allotment that must pass through to eligible recipients?

Answer. Yes. In this instance, the recipient of the funds, a university, is a postsecondary educational institution and therefore an eligible recipient under the Act. All funds that go to eligible recipients may be counted towards the 80 percent portion of the Title II allotment.

Section 401.41 Local applications.

Question. Do local eligible recipients apply for funds for both Titles II and III of the Act through a local application?

Answer. Yes.

Question. Can any distribution of funds under the Act be made to an eligible recipient prior to State approval of an application from that eligible recipient?

Answer. No.

Question. Should the process and procedures used in developing the local application allow time for private industry councils, and other interested parties to review and comment on local applications before they are submitted to the State board?

Answer. Yes. Although section 115(b) of the Act does not clearly state that local applications are to be made available for review and comment before submission to the State board, the Secretary believes this was the intent of Congress. Any other interpretation would dramatically reduce the impact of the required opportunity for review and comment.

Question. Should the local application contain evidence of cooperation with the comments from third party reviewers i.e., special education and private industry councils?

Answer. Section 401.41(b)(2) requires that the local application contain only a description of the coordination with relevant programs conducted under JTPA and the Adult Education Act. The regulations do not require that the local application contain comments made by outside reviewers of the application. However, a State may establish such a requirement for local applications if it desires.

Section 401.51 Vocational Education Opportunities Program.

Question. Under sections 201(a) and (b) of the Act, can the phrase "vocational education services and activities" be interpreted to include those "program improvement and supportive services" included under Subpart 3 of Part A of the Vocational Education Act, making those services fundable with Title II, Part A set-aside funds?

Answer. Yes, as long as these services and activities meet the requirements of Title II, Part A of the Act.

Section 401.52 and Section 401.53 Vocational Education Opportunities Program—programs for handicapped and disadvantaged individuals.

Question. How should an eligible recipient compute the average per-pupil expenditure as required in section 201(c) of the Act for separate programs? How would a separate vocational school operated by the State board make the calculation?

Answer. Generally, an eligible recipient or a State-operated school would first identify each comparable program it provides to non-handicapped or non-disadvantaged students. Then it would calculate the total cost of offering each program on a fiscal year or program year basis. At a minimum, all direct costs—such as salaries, supplies, and equipment—would be included in the calculation. Indirect costs may also be included. These program costs are then divided by the number of Full Time Equivalent (FTE) pupils served in each program to determine an average per-pupil cost.

Using the same cost basis, the cost of operating the separate (or non-mainstreamed) program for handicapped or disadvantaged persons would be calculated on a per-FTE pupil basis. To the extent that the per-pupil costs in the separate program for the handicapped or disadvantaged students exceed the average per-pupil costs identified in the comparable regular programs, these costs may be paid from Federal funds allocated under section 203(a) of the Act. Matching funds must also be applied against these costs. When an eligible recipient can identify no comparable regular program within its offerings then it may use the average per-pupil costs of comparable regular programs offered by another eligible recipient. However, such costs must be truly comparable. That is, cost differentials between the eligible recipients such as salary levels would have to be adjusted for.

Question. Can funds for handicapped and disadvantaged individuals under Part A of Title II of the Act be allocated directly to teacher training institutions to support training for teachers to work with handicapped or disadvantaged students?

Answer. Yes. Postsecondary institutions are eligible recipients for funds allocated under section 203(a) of the Act. However, the within-State allocation requirements set forth in this section must be applied in determining allocations to all eligible recipients. Additionally, if such funds are to be used for teacher training, such courses must be confined to inservice education for vocational education teachers who serve handicapped or disadvantaged students.

Question. If a separate vocational program is necessary to address the special needs of handicapped and disadvantaged students, would it be allowable to purchase the same kinds of equipment, tools, materials, and supplies as are used in the regular vocational education program?

Answer. Yes. However, under §§ 401.52(b) and 401.53(a)(2) a State may use Federal funds only for the Federal share of costs of the services and activities in separate vocational education programs for handicapped and disadvantaged individuals which exceed the average per-pupil expenditures for the comparable regular vocational education services and activities.

Question. May funds under Title II, Part B of the Act used to serve handicapped or disadvantaged persons be used to help meet the Title II, Part A, set-aside percentages?

Answer. No. Although funds under Title II, Part B may be expended by eligible recipients to serve handicapped or disadvantaged persons, they are reported and used under the authority of Title II, Part B of the Act.

Question. Section 401.52(a) speaks to the use of Federal funds for "staff, equipment, materials, and services." However, § 401.52(b) speaks only to the use of Federal funds for "services and activities." Is the intent of this wording to preclude the use of Federal funds for "equipment" as specified in § 401.52(a)?

Answer. No. The list of authorized activities set forth in § 401.52(a) also applies to separate vocational education programs for handicapped persons as described in § 401.52(b). Additionally, the list of authorized activities set forth in § 401.53(a)(1) also applies to separate vocational education programs for disadvantaged persons as described in § 401.53(a)(2).

Question. Are machinery and tools purchased under the authority of section 201(d) of the Act considered as supplemental or additional costs?

Answer. Yes. Modern machinery and tools acquired under section 201(d)(2) of the Act for schools in which at least 75 percent of the students enrolled are economically disadvantaged are presumed to be "supplemental or additional" equipment for the purposes of section 201(c)(1) of the Act.

Question. Does section 201(d) of the Act means that funds under Part A of Title II can be spent for machinery and tools for programs for economically disadvantaged persons only in schools in which 75 percent of the students enrolled are economically disadvantaged?

Answer. No. Section 201(c)(2) authorizes the use of Title II, Part A funds to acquire modern machinery and tools for programs for economically disadvantaged persons. Such machinery and tools must be "supplemental or additional," "not provided to other individuals in vocational education,"

and "essential for disadvantaged individuals to participate in vocational education." Modern machinery or tools acquired under section 201(c) could be placed in a school in which less than 75 percent of the students enrolled were economically disadvantaged.

Under section 201(d)(2) of the Act, Title II, Part A funds may be used to acquire modern machinery and tools for use in schools in which at least 75 percent of the students enrolled are economically disadvantaged. Machinery and tools acquired under section 201(d)(2) are deemed to satisfy the requirements in section 201(c)(2) that such equipment be "supplemental or additional, not provided to other individuals, and be essential for the participation of economically disadvantaged students." Also, machinery and tools acquired under section 201(d)(2) may be used to provide instruction to students who are not economically disadvantaged (but who are enrolled in schools at which at least 75 percent of the enrollment is economically disadvantaged). Of course, the matching requirements of § 401.94(b) of the regulations apply to acquisitions under sections 201(c)(2) and 201(d)(2) of the Act.

Question. Does the reference in § 401.53(b)(2) to "schools" in which 75 percent of the students are disadvantaged refer to (1) the school building, (2) the specific vocational education program offered by the district, or (3) the entire eligible recipient?

Answer. Neither the Act nor the regulations specifically define the term "school." However, the *Combined Glossary: Terms and Definitions From the Handbooks of the State Educational Records and Reports Series* published by the National Center for Education Statistics defines the term as "a division of the school system consisting of students comprising one or more grade groups or other identifiable groups, organized as one unit with one or more teachers to give instruction of a defined type, and housed in a school plant of one or more buildings. More than one school may be housed in one school plant, as is the case when the elementary school and secondary school programs are housed in the same school plant."

Question. Can the total cost of extended school day programs for the disadvantaged be funded from funds set aside for the disadvantaged under Part A of Title II of the Act?

Answer. No. Funds allocated for disadvantaged persons under Part A of Title II of the Act may not be used to support the total cost of providing vocational education in extended school day programs for disadvantaged persons. Title II, Part A funds may be used to pay the Federal share of the additional average per-pupil cost of such programs compared to a comparable regular program. Such programs might also be funded under Part B of Title II, subject to the matching requirement.

Question. The Act no longer includes the word "nonprofit" in the definition of postsecondary educational institution. In addition, it contains no definition of the term "postsecondary program." Does this mean that private, non-degree granting trade schools are now "eligible recipients?" If so, could such schools apply for Title II, Part A, disadvantaged and handicapped monies which are distributed by formula?

Answer. Any institution "legally authorized to provide postsecondary education within a State" is a "postsecondary educational institution" "under the Act. Therefore, a private, non-degree granting trade school which is authorized under State law to provide postsecondary education is an eligible recipient under the Act and may, consistent with State policy as expressed in the State plan, apply for Title II, Part A funds reserved for handicapped and disadvantaged individuals and distributed according to the statutory formula.

Section 401.54 Vocational Education Opportunities Program—programs for adult training or retraining.

Question. Can a program for adult training or retraining be jointly funded from both Parts A and B of Title II of the Act, and if so would the funds have to be accounted for separately by source?

Answer. Yes. A program for adult training and retraining may be funded from Parts A and B of Title II of the Act consistent with the requirements of both Parts. However, a State must account separately for funds derived from different parts of the Act so that it is possible to determine that the various requirements of the Act have been met.

Section 401.55 Vocational Education Opportunities Program—programs for single parents and homemakers.

Question. May local educational agencies request the following information from students desiring to participate in programs for single parents and homemakers:

(a) marital status;

(b) whether they are unmarried or legally separated; and

(c) whether they have sole or joint custody of a minor child or children?

Answer. To the extent it is necessary to request information regarding a person's marital and family status to establish his or her eligibility for programs intended for single parents and homemakers, States are authorized by the Act to make reasonable inquiries.

Question. Under Title II, Part A of the Act, may community-based organizations receive subgrants for programs serving single parents and homemakers?

Answer. Yes. Although community-based organizations are not defined as eligible recipients, 401.55(c) specifically allows a State to make subgrants to community-based organizations of demonstrated effectiveness for the provision of vocational education services to single parents and homemakers. The State must determine that a community-based organization has demonstrated effectiveness in providing comparable or related services to single parents and homemakers, taking into account cost and quality of training and characteristics of participants.

Question. May grants made directly to a local community-based organization for the provision of vocational education services to single parents and homemakers be considered part of the 80 percent flow-through to eligible recipients required in § 401.19(a)(4)?

Answer. Yes. Funds granted to community-based organizations under the authority of § 401.55(c) are considered part of the 80 percent flow-through under the authority of § 401.40(d)(1).

Section 401.56 Vocational Education Opportunities Program—programs designed to eliminate sex bias and stereotyping.

Question. May funds available under section 202(5) of the Act be used to support State agency responsibilities relating to the Methods of Administration (MOA) required by the Office of Civil Rights?

Answer. Funds made available under section 202(5) of the Act must be expended for programs, services, and activities set forth in section 201(g) of the Act. To the extent that these expenditures also address State responsibilities under the MOA, they may be used for this purpose.

Question. Regarding section 201(g) of the Act, what indicators are acceptable as "essential to meet the objectives of this section" in order to justify a waiver of the age limitations?

Answer. The conditions under which a waiver may be granted are determined by the full-time person assigned to eliminate sex bias and stereotyping

under § 401.13(a), and would relate to local circumstances and needs.

Question. Does § 401.56(a) require a State to carry out, during the period covered by the State plan, each of the three activities authorized to serve individuals who participate in programs designed to eliminate sex bias and stereotyping?

Answer. No. States may choose to fund one or more of the activities described in § 401.56(a).

Section 401.58 Vocational Education Opportunities Program—additional uses of funds.

Question. Must Title II, Part B programs meet requirements concerning excess costs and matching when such programs serve populations under Title II, Part A?

Answer. No. When funds from Title II Part B are used to serve populations described in Part A, the requirements of Part B apply.

Question. May a State use funds under the Vocational Education Opportunities Program to provide basic skills instruction to prepare students to enter regular vocational programs?

Answer. Basic skills instruction is authorized by § 401.58(a)(1) for students who are enrolled in a vocational education program, including a regular vocational education program, when that instruction is related to their vocational instruction, and when the State board determines that such instruction is necessary. Basic skills instruction is not authorized for students who are not enrolled in a vocational education program.

Question. Can funds under the Vocational Education Opportunities Program (Title II, Part A) be used to support the total cost of providing cooperative vocational education programs and apprenticeship programs, including the related classroom skill development instruction under the provisions of § 401.58(b)?

Answer. Yes, if the programs are for: (1) Single parents and homemakers; (2) individuals who are participants in programs to eliminate sex bias and stereotyping in vocational education; or (3) criminal offenders who are in correctional institutions. Programs for handicapped individuals, disadvantaged individuals, or adults who are in need of retraining, are subject to the 50 percent matching requirement. However, this matching requirement need not be satisfied on a project-by-project basis, but may be satisfied on an aggregate basis. In addition, programs for handicapped and disadvantaged individuals are subject to the supplementary or additional cost requirement.

Section 401.60 Vocational Education Improvement, Innovation, and Expansion Program.

Question. Is there any single method or formula for comparing the costs of operating a program in a proprietary vocational school versus operating the same program in a public vocational school?

Answer. No. Each State must develop a fair approach to this issue that accommodates the conditions and laws in that State. However, item 45 in the Conference Report states that, "When deciding which institutions can deliver services in a cost effective manner, consideration should be given to expenses, such as the depreciation or rental cost of buildings and administrative expenses for all institutions so that comparisons on the ability to provide services on a competitive basis is an equitable one." House Report No. 98-1129, 98th Cong. 2d Sess. p. 71.

Question. May funds under Title II, Part B be used to pay for the installation and servicing of new high-tech equipment as well as for the purchase of related software and materials?

Answer. Yes. Such expenditures would be permissible under the Act so long as they are reasonable and necessary.

Question. What guidance did Congress provide for the term "Modern Industrial Arts?"

Answer. Item 37 of the Conference Report contains the following guidance on the term "Modern Industrial Arts" as well as other terms:

"In adopting provisions allowing the support of pre-vocational education, vocational agriculture, and industrial arts programs, the conferees are particularly concerned that these programs be directed, to the extent possible, toward those activities that are modern and incorporate the latest advances in technology. These would include, but not be limited to, programs that are designed to provide students with awareness and basic skills in expanding and new technology areas such as robotics, lasers, computers, electronics, industrial power systems, fluidities, hydraulics, pneumatics, telecommunications, and biotechnology.

The program activities listed are not intended by the conferees to discourage or disallow traditional and existing vocational agriculture and industrial arts activities at the pre-vocational level." House Report No. 98-1129, 98th Cong. 2d Sess. p. 69.

Section 401.61 Vocational Education Improvement, Innovation, and Expansion Program—distribution of funds.

Question. In order to receive funds under § 401.61(b), must a community-based organization have demonstrated effectiveness over a three-year period as is required in JTPA?

Answer. No. There is no three-year period requirement relating to demonstrated effectiveness in the Act.

Section 401.72 Special Programs—application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations.

Question. Are there any age limitations on the students who can be served in prevocational programs under Part A of Title III?

Answer. No. There are no exclusive age limitations regarding the students who can be served in prevocational programs under Part A of Title III of the Act. However, the joint application to operate a program submitted under § 401.72 must contain an assurance that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages sixteen through twenty-one inclusive.

Section 401.73 Special Programs—Consumer and Homemaking Education Program.

Question. May funds under Title III, Part B of the Act be used to maintain consumer and homemaking programs only in economically depressed areas?

Answer. No. Funds under Title III, Part B of the Act may be used to maintain consumer and homemaking programs in areas that are not economically depressed or affected by high rates of unemployment. However, not less than one-third of the Federal funds must be expended in economically depressed areas or areas with high rates of unemployment.

Section 401.74 Special Programs—Adult Training, Retraining, and Employment Development Program.

Question. May funds available for the Adult Training, Retraining, and Employment Development Program under Title III of the Act be used to maintain existing postsecondary and adult programs?

Answer. No. As stated in section 321(b)(2) of the Act and § 401.74 of the regulations, the primary purpose of this program is to assist the States to expand and improve vocational education

programs to meet the urgent needs of adults.

Section 401.78 Special Programs—Industry-Education Partnership for Training in High-Technology Occupations Program.

Question. Who are eligible recipients under the Industry-Education Partnership Program under Title III, Part E of the Act?

Answer. Local educational agencies and postsecondary educational institutions may apply for assistance under the Industry-Education Partnership Program.

Section 401.90 Conditions a State must meet—reserving funds under the basic State grant.

Question. In reserving funds under the basic State grant, may a State channel all Title II, Part A funds to postsecondary institutions and all Title II, Part B funds to secondary institutions?

Answer. No. The Secretary does not believe that it would serve the purposes of Title II to reserve funds solely on the basis of institutional level. Part A funds are intended to provide vocational educational opportunities for a variety of individuals in six discrete groups, many of whom may be in secondary institutions. For example, the equal access provisions for handicapped and disadvantaged persons in section 204 of the Act clearly contemplate serving students in secondary institutions. Similarly, Part B funds are broadly intended to expand, improve, modernize, or develop a wide spectrum of vocational education services and activities. Concentrating all Title II, Part B funds on one institutional level would be inconsistent with this purpose.

Section 401.91 Conditions a State must meet—reserving funds for State administration.

Question. How is the 7 percent administrative reserve calculated, and what is the relationship of this service to the 20 percent a State may reserve for state-wide activities?

Answer. The reservation of not more than 7 percent for State administration is calculated as a percentage of the total State allotment for Title II prior to calculating the 57/43 percent division of Title II funds. The reservation for administration is counted against that maximum of 20 percent of the Title II allotment not distributed to eligible recipients, but reserved for State use.

Question. If an individual performs both administrative and technical assistance functions, must time log sheets be kept on both activities?

Answer. Yes. If the same individual performs both administrative and technical assistance functions and is supported with funds under the Act, appropriate time distribution records must be maintained.

Question. Does the 7 percent restriction on State administration in section 102(b) of the Act refer only to the State board staff or to the State agency staff as well?

Answer. The provision refers to State agency staff as well as State board staff. However, the definition of administration in section 521(l) of the Act provides some flexibility by specifically excluding from the definition of administration curriculum development activities, personnel development, technical assistance, and research activities.

Question. Must expenditures of funds from the 20 percent State share under Title II be accounted for by source of funds and by object and purpose of expenditure?

Answer. Yes. It is necessary to identify those expenditures by source of funds and by object and purpose to know if those expenditures are consistent with the requirements of the Act.

Question. May Title II, Part A funds from the 20 percent State share be used to meet set-aside requirements in Part A for programs other than those serving handicapped and disadvantaged individuals?

Answer. Yes.

Section 401.92 Conditions a State must meet—reserving funds under the Vocational Education Opportunities Program.

Question. From its Title II allotment, can a State expend more than is required by the percentages in § 401.92?

Answer. Yes. There is no impediment to using funds under Title II, Part B of the Act to serve one or more populations in Title II, Part A, so long as Title II, Part B requirements are met and the funds are reported under Part B.

Question. Will the States be deemed substantially out of compliance if the full set-asides for handicapped and disadvantaged individuals under Part A of Title II are not expended?

Answer. Yes. If States do not expend these funds during the authorized period for obligation, they will be substantially out of compliance with the requirements of the Act and must return the unobligated funds to the Secretary.

Question. If the State receives from eligible recipients local applications for programs for handicapped or disadvantaged individuals which propose to spend less than the formula allotments for these eligible recipients, can the State hold the funds not applied for for allocation later during the 27-month expenditure period, or does the 100 percent flow-through requirement forbid this?

Answer. The State may hold the funds for later allocation during the 27-month period for obligation. See the comment and response on this topic in Appendix A, §§ 401.95 and 401.96.

Question. May the Title II, Part A funds set aside under § 401.92(f) for criminal offenders in correctional institutions be awarded to postsecondary vocational-technical schools if those schools conduct vocational training for criminal offenders?

Answer. A State may use the funds reserved for criminal offenders under § 401.92(f) to provide vocational education programs, activities, or services for these individuals through eligible recipients, including postsecondary educational institutions, as defined in section 521 of the Act. The State may also provide these services directly or may contract for their provision.

Section 401.94 Conditions a State must meet—cost sharing requirements.

Question. Do the matching requirements that apply to Title II of the Act require that expenditures for individual activities be matched?

Answer. No. Under Title II, Part A of the Act, matching requirements apply on a total program basis, for example, the program for disadvantaged persons or the program for handicapped persons. Therefore, non-Federal funds need not match Federal funds for each service or activity supported.

Federal expenditures under Title II, Part B of the Act must be matched with non-Federal funds spent for the same purposes authorized by Part B of Title II, but the match requirement is aggregate and does not apply on an activity-by-activity basis.

Question. How are Federal funds that are used for required program evaluations and data collection to be matched?

Answer. A State must comply with the matching requirements applicable to that portion of the State's allotment from which Federal funds are taken to support data collection or evaluation activities. For example, if a State uses funds reserved for State administration to support data collection, the State must match those expenditures for administrative purposes on at least a dollar for dollar basis. Similarly, if a State uses funds under Title II, Part B for

data collection, the State must match those expenditures for program improvement, innovation, and expansion at least dollar for dollar.

Question. Can State or local funds used to maintain vocational education programs be used to match Federal expenditures under Part B of Title II of the Act?

Answer. Yes, if the State or local funds used for the match are spent for the costs of Vocational Education Improvement, Innovation, and Expansion of Programs authorized under § 401.60 (b) or (c). Also see § 401.59.

Question. Can State expenditures of non-Federal funds for evaluations required by section 113(b)(9) of the Act be used to match Federal funds used for State administration if the evaluations are conducted by review teams composed of local educators and community resource persons under contract to the State?

Answer. Yes. If the State considers the required evaluations to be an administrative cost as defined in section 521 of the Act, it may use non-Federal expenditures for such evaluations to match expenditures of Federal funds for State administration. However, if the State does not consider the evaluations to be an administrative cost, but, for example, research, a State may not use non-Federal evaluation expenditures to satisfy the matching requirement for the Federal funds reserved for administration. The regulations do not prohibit the evaluation of programs by review teams composed of local personnel who are under contract to the State.

Question. Where the law provides for 100 percent Federal funding, such as for single parent and homemaker programs, may a State allocate less than 100 percent to a local educational agency and require local support? For example, could a program be 75 percent federally supported and 25 percent locally supported?

Answer. Yes. Consistent with the purposes of the Act, States may impose reasonable cost-sharing requirements as a condition for approving an application from an eligible recipient. However, if a State pursues such a course, the State must identify the cost-sharing requirement as a State imposed requirement, and include it in the State plan as a criterion for distribution of funds.

Question. May a State use funds under Title II of the Act that are not reserved for State administration to pay the salaries of State staff who provide technical assistance, and match those expenditures on a State-wide aggregate basis rather than an activity-by-activity basis?

Answer. A State must comply with the matching requirements applicable to that portion of the State's allotment from which the Federal funds are taken to support the State staff. For example, if a State uses funds under Title II, Part B of the Act to provide technical assistance, it must match expenditures for program improvement, innovation, and expansion on at least a dollar-for-dollar basis. This matching requirement may be satisfied on a State-wide, aggregate basis and need not be satisfied on an activity-by-activity basis. Similarly, a State would have to comply with the matching requirements applicable to the various programs under Title II, Part A. However, funds under Title II, Part A that are reserved for handicapped individuals or disadvantaged individuals may not be used to pay the salaries of State staff, and the matching requirement for programs for adults who are in need of training and retraining may be satisfied on a State-wide, aggregate basis from non-Federal expenditures for such programs.

Question. Is it possible to fully fund projects solely for handicapped or disadvantaged individuals at State-supported institutions with Federal funds because they have no other support? The institutions would be State correctional institutions and State institutions for deaf and blind persons.

Answer. No. Title II, Part A funds must be distributed to eligible recipients. Assuming that the state institutions in question are local educational agencies, within the meaning of section 521 of the Act, Title II, Part A funds may be used to support separate programs for handicapped or disadvantaged individuals. However, these funds may not be used to pay the full cost of such programs, but are limited to the excess costs of such programs, in this case an amount which exceeds the recipient's average per-pupil expenditure for regular vocational education services and activities. The expenditure of Title II, Part A funds need not be matched on an activity-by-activity basis, but may be matched on an aggregate, program-by-program basis.

Section 401.95 and Section 401.96 Conditions a State must meet—allocations for handicapped and disadvantaged individuals.

Question. Is it the Department's interpretation, in § 401.96(b), that the special provision for the use of funds for persons with limited English proficiency applies only to the disadvantaged set-aside and not to the handicapped set-aside?

Answer. Yes. While section 203(a)(3) of the Act might be read so that the set-aside requirement for limited English proficient persons applies to funds reserved for handicapped persons as well as funds reserved for disadvantaged persons, the Secretary does not believe that Congress intended that result. First, such an interpretation would be contrary to years of program experience under the Vocational Education Act, and there is no legislative history to support such a dramatic shift. Second, there would be severe programmatic problems. While persons with limited English proficiency are defined as disadvantaged for purposes of the Act they are not defined as handicapped. Presumably, therefore, funds set aside for persons with limited English proficiency from the funds reserved for the handicapped could only be used to serve persons who were both handicapped and limited English proficient.

Question. Precisely which students must be counted for purposes of the within-State allocation of funds for handicapped individuals under sections 203(a)(1)(B)(i) and 203(a)(1)(B)(ii) of the Act? Which students must be counted for purposes of the within-State allocation of funds for programs for disadvantaged individuals under sections 203(a)(2)(B)(i) and 203(a)(2)(B)(ii) of the Act?

Answer. Under section 203(a)(1)(B)(i) of the Act, 50 percent of a participating eligible recipient's allotment from funds reserved to serve handicapped persons is determined by dividing the number of "economically disadvantaged" individuals enrolled in all programs offered by that eligible recipient (including those enrolled in vocational education programs) in the preceding program year by the total number of such individuals enrolled by all participating eligible recipients in the State during the same year. The enrollment count year is that State program year immediately preceding the program year in which the determination is made.

Under section 203(a)(1)(B)(ii), the remaining 50 percent of a participating eligible recipient's allotment for handicapped persons is determined by dividing the number of "handicapped" individuals served by that eligible recipient's vocational eduction programs, in the State program year immediately preceding the program year in which the determination is made, by the total number of such individuals served in vocational eduaction by all participating eligible recipients in the State during the same program year.

Under section 203(a)(2)(B)(i), 50 percent of a participating eligible recipient's allotment from funds reserved to serve disadvantaged persons is determined by exactly the same method as for section 203(a)(1)(B)(i), above. Consistency should be maintained in defining which grade-levels serve as beginning and ending points for these counts.

Under section 203(a)(2)(b)(ii), the remaining 50 percent of a participating eligible recipient's allotment for disadvantaged persons is determined by dividing the number of "disadvantaged" individuals served by that eligible recipient's vocational education programs, in the State program year immediately preceding the program year in which the determination is made, by the total number of such individuals served in vocational education programs by all participating eligible recipients in the State during the same program year.

The count of "disadvantaged" individuals includes those who are economically disadvantaged and those who are academically disadvantaged. Academically disadvantaged individuals include those individuals who have limited English proficiency, as well as those who are dropouts, from, or identified as potential dropouts, from secondary school. In addition, the count must include those individuals who qualify as "academically disadvantaged" under whatever special precentile, grade-point average, or academic competency measure, or combination of measures, that the State has elected to use under the definition of "academically disadvantaged" that appears in § 400.4(b) of the regulations. Note that individuals with learning disabilities must be counted as "handicapped." Also, some individuals (for example, migrants) may be classifiable as both "economically disadvantaged" and as "academically disadvantaged," if they can meet the necessary criteria. Such an individual may be counted once as part of the "first 50 percent" disadvantaged calculation (i.e., as an "economically disadvantaged" person enrolled in any program offered by the eligible recipient, whether vocational education or not) and may be counted once again as part of the "second 50 percent" disadvantaged calculation (as either an economically disadvantaged or an academically disadvantaged individual).

Question. Is every recipient that is eligible to receive funds under Title II, Part A for handicapped and disadvantaged persons required to accept and use these funds?

Answer. No. There is no statutory requirement that all agencies eligible to receive funds for handicapped and disadvantaged persons are required to participate in Federally-supported vocational education programs for these populations.

Question. Can an eligible recipient receive set-aside funds for limited English proficient students if no such students will be enrolled?

Answer. Title II, Part A funds reserved for disadvantaged persons are allocated to eligible recipients based on counts of economically disadvantaged individuals enrolled and disadvantaged individuals served in vocational education by the eligible recipient. An eligible recipient must spend a minimum percentage of these funds on persons with limited English proficiency as determined by the requirements of section 203(a)(3) of the Act. Regardless of the percentage which is calculated (based on a prior year count of LEPs served by the eligible recipient), if no LEPs are currently enrolled by the eligible recipients, no expenditures for this population are required.

Section 401.97 Conditions a State must meet—matching requirements for programs for handicapped and disadvantaged individuals.

Question. Please clarify § 401.97 which requires that the non-Federal contribution for the costs of vocational education programs, services, and activities for handicapped and disadvantaged individuals under Part A of Title II shall be furnished equitably by the State from State and local sources. What does "equitably" mean in this context?

Answer. A State has considerable discretion in determining what constitutes an equitable division of the required match. An equitable division could involve a range of cost-sharing percentages across eligible recipients based on relative local ability or any other reasonable criteria the State may choose.

Section 401.99 Conditions a State must meet—joint projects.

Question. When eligible recipients provide joint projects for handicapped and disadvantaged persons, must the funds be (1) reported separately by eligible recipients, or (2) reported separately by handicapped and disadvantaged persons served, or (3) both?

Answer. If there is a joint project, the eligible recipients involved must determine which of them will be the fiscal agent for the project, who will monitor the project, who will submit reports, and perform other necessary administrative functions. It two eligible recipients receive separate subgrants and are cooperating in the provision of services, then the funds must be accounted for separately. In both instances, funds for handicapped and disadvantaged persons must be accounted for separately.

Section 401.101 Conditions a State must meet—equal access provisions.

Question. Since the "equal access" requirements in § 401.101 relate to funds under §§ 401.95 and 401.96 only, may an eligible recipient choose not to receive these funds? Can this same eligible recipient receive funds under Title II, Part B of the Act?

Answer. Yes, an eligible recipient may choose not to apply for funds under §§ 401.95 and 401.96. However, if a local educational agency receives an allocation of funds under §§ 401.95 and 401.96, it is subject to § 401.101.

Question. Does the wording of §§ 401.101 and 401.19(a)(18) mean that all "equal access" actions pursued under § 401.101(b)(1) are automatically fundable with monies set aside under Title II, Part A of the Act for handicapped or disadvantaged persons?

Answer. No. The activities described in § 401.101(b)(1) are not "automatically" fundable with Title II, Part A funds set aside for handicapped and disadvantaged persons. However, as § 401.101(b)(2) states, those set-aside funds may be used to support the activities described in § 401.101(b)(1) "consistent with the regulations in this part," including the requirements that such activities be supplementary in nature and essential to participation in vocational education. The Secretary believes that in many instances States will be able to use the set-aside funds for these activities. Of course, if the local educational agency has already satisfied the requirements of § 401.101(b)(1) from State or local funds, it may use the Title II, Part A funds for other types of authorized activities for handicapped and disadvantaged individuals.

Question. Why are the benefits of § 401.101(b) (assessment, adaption of curriculum, counseling, transition, etc.) limited to handicapped or disadvantaged students who enroll in vocational education programs?

Answer. Section 204(c) of the Act requires each local educational agency that receives an allocation of Title II, Part A funds reserved for handicapped and disadvantaged persons to provide the services in question to "each student who enrolls in vocational education programs."

Section 401.102 Conditions a State must meet—Consumer and Homemaking Education Program.

Question. What is meant by the term "State leadership" with respect to the 6 percent cap on expenditures as set forth in sections 313(b) and 333(b) of the Act and reflected in §§ 401.102(b)(2) and 401.105(b)(2) of the regulations?

Answer. The Secretary interprets the references to State leadership activities in sections 313(b) and 333(b) of the Act to refer to the leadership activities mandated by sections 313(a) and 333(a) of the Act, respectively.

Section 401.105 Conditions a State must meet—Comprehensive Career Guidance and Counseling Program.

Question. Regarding section 332(c) of the Act, does the mandate to use a minimum of 20 percent of the funds to eliminate stereotyping and to ensure accessibility refer only to Title III, Part D funds, or does the requirement refer to all funds spent under the Act for career guidance and counseling?

Answer. The 20 percent requirement applies only to funds under Part D of Title III.

Part 401—General

Question. If a State chooses to distribute Title II, Part B funds based in part on counts of students served or enrolled, may the State establish a minimum allotment amount for eligible recipients?

Answer. Yes. A State may establish a minimum allotment amount when making awards to eligible recipients from funds under Title II Part B.

Question. Can funds from Title II of the Act be "shifted" or transferred to Title III of the Act, for instance, to use all Federal funds for guidance and counseling programs?

Answer. No. A State may not "shift" or transfer funds from Title II to Title III. However, where authorized, the State may use funds within these two titles for the same purposes. For instance, funds from Title II, Part B and funds from Title III, Part D might both be used for guidance and counseling programs. However, the separate fiscal requirements for Title II and Title III would apply.

Question. Can funds be distributed by formula (data aggregated by geographic area) to an area planning entity that represents a selected geographic area and that further disburses those funds to eligible recipients through a regional planning process?

Answer. No. However, if the State has established intermediate school districts that satisfy the definition of a local educational agency, such entities may be considered eligible recipients.

Question. How should States utilize and report funds allotted under the Vocational Education Act (carryover funds) for fiscal years 1984 and 1985 that remain unobligated as of July 1, 1985?

Answer. The following information is general guidance to States regarding carryover funds. Specific questions regarding carryover should be directed to the Division of Vocational Education. At the outset, a brief examination of the applicable provisions of law is necessary. As applied to funds appropriated for use under the Vocational Education Act (VEA) or the Carl D. Perkins Vocational Education Act, the so-called Tydings Amendment, section 412(b) of the General Education Provision Act (20 U.S.C. 1225(b), as implemented in 34 CFR 76.705 and 76.706) provides, in general, that States may carry over obligated funds for one fiscal year. Thus, fiscal year 1984 funds appropriated under the VEA for use during the 1983–84 school year, remain available for obligation through September 30, 1985. Fiscal year 1985 funds appropriated under the VEA for use during the 1984–85 school year, remain available for obligation through September 30, 1986.

The Tydings Amendment also provides that funds carried over into the succeeding fiscal year must be obligated in accordance with the statute, regulations, and State plan that are in effect for that succeeding fiscal year. Thus, in general, the Tydings Amendment requires that funds which are appropriated for use under the VEA but are unobligated as of July 1, 1985, and are carried over for obligation after that date must be obligated in accordance with the Carl D. Perkins Vocational Education Act, its implementing regulations, and the State plan for that period approved by the Secretary under that Act. This approach not only promotes accountability, but also serves to avoid the confusion that would be caused by attempting to admininster the same program during a single fiscal year with funds from different grants which are subject to different legal requirements. In sum, under the Tydings Amendment, carryover VEA funds are generally to be treated as if they were current year funds under the Carl D. Perkins Vocational Education Act, except that fiscal year 1983 funds not obligated by September 30, 1985, and fiscal year 1984 funds not obligated by September 30, 1986, must be returned to the Secretary.

Another provision of law that bears on the use of carryover VEA funds after July 1, 1985, is the transition provision in section 3(a) of Pub. L. 98–524. Section 3(a) provides, in part, that States and eligible recipients may use funds received under the VEA to conduct planning for any program or activity authorized by the Carl D. Perkins Vocational Education Act or to conduct any other activity deemed necessary to provide for an orderly transition to the operation of programs under the Carl D. Perkins Vocational Education Act. Thus, in general, States and eligible recipients may use carryover VEA funds to take reasonable and necessary steps to implement an orderly transition to operations under the Carl D. Perkins Vocational Education Act.

In light of these provisions of law, States should, subject to possible exceptions described below, treat carryover VEA funds as if they were current year funds (except for their more limited period of availability) subject to all the various provisions of the Carl D. Perkins Vocational Education Act, including fund distribution requirements, cost requirements, and any limitations on authorized activities. The following table explains how carryover funds should be used.

VEA carryover	Carl D. Perkins Act
Sex Equity Coordinator	Title II, Basic Grant
Subpart 2	Title II, Basic Grant
Subpart 3	Title II, Basic Grant
Subpart 4	Title II, Basic Grant
Subpart 5	Title III, Part B (Consumer and Homemaking Education)
State Planning Grant	Title II, Basic Grant
State Advisory Council	State Council

As of July 1, 1985, (and subject to possible exceptions described below), carryover funds described in the left hand column become subject to all the statutory and regulatory requirements of the portions of the Carl D. Perkins Vocational Education Act described in the right hand column. This means, for example, that carryover funds that are specifically reserved under the VEA for certain populations and purposes, such as services to handicapped or disadvantaged persons, or the support of the sex equity coordinator, lose that identifying characteristic on July 1, 1985, are carried over in accordance with the table above, and are used in accordance with the fund distribution requirements of the Carl D. Perkins Vocational Education Act. (Nevertheless, as discussed below, a State may choose to obligate its carryover funds so reserved under the VEA for only those populations and purposes, even after July 1, 1985, as part of its transition to the operation of programs under the Car D. Perkins Vocational Education Act).

The sole exceptions to the guidance provided in the preceding paragraphs relate to the authority of States and eligible recipients to use carryover funds to implement an orderly transition to the Carl D. Perkins Act. For example, notwithstanding the preceding paragraph, a State or eligible recipient would be authorized by section 3(a) of Public Law 98-524 to use carryover funds after July 1, 1985, to complete a project, service, or activity that was planned and approved under the VEA and was commenced before July 1, 1985, if to do otherwise would frustrate the objectives of that project, service, or activity. In this case, carryover funds could be obligated after July 1, 1985, to support ongoing activities authorized by the VEA and subject to the VEA statutory and regulatory requirements that applied when the activities were begun.

Another possible application of section 3(a) would be the obligation of carryover funds after July 1, 1985, for new projects, services, or activities that are commenced after that date and reflect an important programmatic goal that is both consistent with the purposes of the Carl D. Perkins Vocational Education Act and is compelling in light of the need for an orderly transition from the VEA to that Act. For example, as noted above, a State that had not obligated all its funds specifically reserved for a particular purpose or population under the VEA, such as services to handicapped or disadvantaged persons, or the support of the sex equity coordinator, might (but need not) choose to obligate those carryover funds for that special population after July 1, 1985, under the authority and subject to the cost rules of the Carl D. Perkins Vocational Education Act. In this instance, the State would be using the obligational authority of the Carl D. Perkins Vocational Education Act, but would be departing from the fund allocation provisions of that Act to the extent necessary to accomplish an important programmatic goal compelled by the need for an orderly transition.

Each State that intends to obligate carryover VEA funds after July 1, 1985, must describe the use of those funds in the State Plan. In addition, each State that intends to invoke the transition authority provided by section 3(a) must describe in its State plan how that authority will be utilized. All VEA carryover funds that are not described in the State plan as subject to the transition authority should be carried over in accordance with the table above, and are subject to all the statutory and regulatory requirements of the applicable portions of the Carl D. Perkins Vocational Education Act.

VEA carryover funds obligated after July 1, 1985, under the section 3(a) transition authority of the Carl D. Perkins Vocational Education Act should be accounted for on the financial status report form used to report the fiscal year 1983 and fiscal year 1984 allotments. All other VEA carryover funds obligated after July 1, 1985, should be accounted for on a separate new financial status report form used to report the fiscal year 1986 allotment.

Question. How can States utilize the transition provision of the Carl D. Perkins Act for new grants in fiscal year 1986?

Answer. The following information is general guidance to States regarding the application of the transition provision in section 3(a) of Pub. L. 98-524. Specific questions regarding the transition provision should be directed to the Division of Vocational Education. Section 3(a) provides, in part, that States and eligible recipients may use funds received under the Carl D. Perkins Vocational Education Act to conduct any activity deemed necessary to provide for an orderly transition to the operation of programs under the Carl D. Perkins Act. For example, a State or eligible recipient would be authorized by section 3(a) of Pub. L. 98-524 to use fiscal year 1986 grant funds for an activity that is fully consistent with the purpose of the Carl D. Perkins Act but does not necessarily meet each requirement of the Act. In order to invoke this transition authority, a State must include the following explanations in its State plan:

(1) Why it is necessary to use the transitional authority?

(2) How the transitional authority will be used?

(3) How this use of the transitional authority is fully consistent with the purposes of the Act?

The Secretary will evaluate all such state plan provisions on a case-by-case basis.

Question. Are private vocational training institutions and private postsecondary educational institutions either for-profit or non-profit, eligible as grantees under Title II of the Act?

Answer. A private postsecondary educational institution, either for-profit or non-profit, is an eligible recipient as defined by the Act. In addition, a private vocational training institution may also be an eligible recipient under the Act if it satisfies the statutory definitions of postsecondary educational institution. However, sections 202(h)(2) and 251(a)(22) of the Act establish the conditions under which private postsecondary educational institutions and private vocational training institutions may enter into arrangements with the State to carry out projects authorized by Title II, Parts A and B, respectively.

Question. Section 401.58(a)(2) of the regulations authorizes States to use funds under Title II of the Act to provide vocational education through arrangements with private vocational training institutions, private postsecondary educational institutions, and employers when (among other conditions) such entities can provide substantially equivalent training at lesser cost. What does "lesser cost" mean?

Answer. "Lesser cost" means a cost that is lower than that of an equivalent program at a public institution.

Question. Does the 20 percent limit on State-level expenditures cover only Title II funds or does it extend to Title III?

Answer. The 20 percent limit on State agency expenditures applies only to Title II funds.

Question. Can the total cost of programs under sections 201(h) and (i) of the Act (basic skills instruction; vocational education through arrangements with private postsecondary institutions; and programs that include work-site training, cooperative vocational education, work-study and apprenticeship programs) be funded under Part A of the Act?

Answer. Title II, Part A funds reserved for handicapped and disadvantaged individuals may be used only to pay the excess costs of projects for such individuals and, therefore, may not be used to fund the total cost of programs. Title II, Part A funds reserved for other special populations are not subject to an excess cost requirement and may be used to pay the full cost of authorized activities. Title II, Part A funds reserved for handicapped individuals, disadvantaged individuals, and adults who are in need of training and retraining must be matched on a program-by-program basis.

Question. What sections of the regulations describe the conditions for awards to community-based organizations?

Answer. Conditions for making awards to community-based organizations for selected purposes are described in the following sections of the regulations:

a. Considered as an eligible recipient—§ 401.40(d)(1);

b. To serve single parents and homemakers—§ 401.55(c);

c. To serve the disadvantaged, under Title II, Part A—§ 401.98;

d. For program improvement, innovation, and expansion, Title II, Part B § 401.61(b); and

e. For Community-Based Organizations Special Program, Title III—§§ 401.71 and 401.72.

Question. May tuition paid by vocational students to postsecondary vocational institutions be used as part of the non-Federal match?

Answer. No. The use of tuition paid by students to satisfy a matching requirement is prohibited by 34 CFR 76.534.

Part 407—Bilingual Vocational Training Program

Section 407.2 Eligible applicants.

Question. Can Joint Apprenticeship Committees be considered as private non-profit vocational training institutions under the Bilingual Vocational Training Program and therefore be eligible to receive funds under this program?

Answer. It is very unlikely that a Joint Apprenticeship Committee would meet the requirements of a private vocational training institution as defined in the Act.

Part 414—State Equipment Pools

Section 414.4 Definitions.

Question. What is the source of the definition in § 414.4 relating to "high technology?"

Answer. The definition of "high technology state-of-the-art equipment" was developed by the Secretary based on the definition of "high technology" in section 251 of the Act.

Parts 407–409—General

Question. In §§ 407.30, 408.30, and 409.30, what is the purpose of reserving 15 points which the Secretary may assign among the criteria in §§ 407.31, 408.31, and 409.31?

Answer. The purpose of reserving 15 points for the Secretary's use is to permit the Secretary to emphasize one or more criteria in a particular competition, if the Secretary deems this to be desirable.

Question. Will the assignment of the 15 reserved points be announced in the **Federal Register** at the same time the application announcement is made?

Answer. Yes. The Assignment of the 15 reserved points will be announced in the **Federal Register** at the same time the application announcement is made for a particular competition.

[FR Doc. 85–19531 Filed 8–15–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

New Projects Under the Vocational Education Indian and Hawaiian Natives Program for FY 1986; Extension of Closing Date for Transmittal of Applications

AGENCY: Department of Education.

ACTION: Extension of closing date for transmittal of applications for new projects under the Vocational Education Indian and Hawaiian Natives Program for fiscal year 1986.

SUMMARY: The August 16, 1985 closing date for transmittal of applications for fiscal year 1986 new projects under the Vocational Education Indian and Hawaiian Natives Programs is extended. The new closing date is August 30, 1985. The original closing date was published in the **Federal Register** of June 13, 1985, page 24811. Extension of the closing date is necessary because of a delay in publishing the final program regulations. The selection criterion in § 411.31(i), *Employment opportunities,* has been modified to show the extent to which, upon the completion of their training, more than 65 percent of the trainees will be employed in jobs, including military specialties, related to their training or will be pursuing additional related training. Prospective applicants should consult the final regulations published in this issue of the **Federal Register** for the change in wording in this section.

Applications are invited for new projects under the Vocational Education Indian and Hawaiian Natives Program. This notice covers awards for Indian tribes and Indian organizations and does not apply to awards for Hawaiian natives.

FOR FURTHER INFORMATION CONTACT: For further information contact Harvey Thiel or Timothy Halnon, Program Specialists, Special Programs Branch, Office of Vocational and Adult Education, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 372-2380.

(20 U.S.C. 2303)

(Catalog of Federal Domestic Assistance No. 84.101, Vocational Education—Programs for Indian Tribes, Indian Organizations, and Hawaiian Natives)

Dated: August 9, 1985.

Robert M. Worthington,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 85-19532 Filed 8-15-85; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Friday
August 16, 1985

Part VIII

Department of Education

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 515 and 562

Bilingual Education; Fellowship Program; Final Regulations With Invitation To Comment

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 515 and 562

Bilingual Education; Fellowship Program

AGENCY: Department of Education.

ACTION: Final Regulations With Invitation To Comment.

SUMMARY: The Secretary issues final regulations with invitation to comment under section 743 of Part C of the Bilingual Education Act, as amended by Pub. L. 98-511. These amendments to the Act necessitate the changes incorporated in these regulations. Institutions of higher education (IHEs) are eligible to apply for participation in the Fellowship Program. The Fellowship Program provides financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comments must be received on or before October 15, 1985.

ADDRESSES: All written comments should be sent to Ramon M. Chavez, Jr., Education Program Specialist, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, D.C. 20202. Telephone: (202) 245-2595.

FOR FURTHER INFORMATION CONTACT: Ramon M. Chavez, Jr., Telephone: (202) 245-2595.

SUPPLEMENTARY INFORMATION: The authority for the Fellowship Program is under section 743 of Part C of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, enacted on October 19, 1984 (20 U.S.C. 3221-3262).

Although not eligible for funds, an IHE may apply for participation in the Fellowship Program. An individual submits an application for a fellowship to an IHE which is approved for participation in the Fellowship Program. A participating IHE forwards to the Secretary names of individuals nominated for fellowships. The Secretary selects Fellows from among the names nominated.

The final regulations include:

(a) *Subpart A—General.*

Section 562.1 of the regulations describes the scope and purpose of the program.

Section 562.2 identifies the parties eligible for assistance under this program.

Section 562.3 indicates what regulations apply to this program.

Section 562.4 indicates the definitions that apply to this program. The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

Section 562.5 describes allowable costs under the Fellowship Program.

(b) *Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?*

Section 562.10 describes how the Secretary approves IHEs. The Secretary determines whether to approve an IHE for participation in the Fellowship Program with regard to each language curriculum. The selection criteria the Secretary uses are listed in § 562.11. The Secretary then designates the maximum number of fellowships by language curriculum that may be awarded at the IHE.

(c) *Subpart C—How Does an Individual Apply for a Fellowship?*

Section 562.20 indicates how a participant applies for a fellowship award.

(d) *Subpart D—How Does the Secretary Select New Fellows?*

Section 562.30 contains the criteria the Secretary considers in selecting Fellows. The Secretary gives preference to individuals intending to study in certain specialized areas. The Secretary may also give preference to second- and third-year recipients.

Section 562.31 addresses the period of a fellowship award.

(e) *Subpart E—What Conditions Must Be Met by Fellows?*

Section 562.40 requires that Fellows, within 6 months of completion of their studies, must work in an activity related to programs of bilingual education.

Section 562.41 requires repayment of the fellowship assistance if the recipient does not work in one of the activities discussed in § 562.40.

Section 562.42 describes the repayment schedule for a fellowship award. Repayments begin within 6 months of the date that the Fellow ceases to be enrolled as a full-time student in the Fellowship Program, unless a deferment has been approved in accordance with § 562.44. If the Fellow ceases to work in an approved activity, he or she must repay a prorated amount of the fellowship.

Section 562.43 provides that the Secretary charges a recipient interest on the unpaid balance of a fellowship award in accordance with 31 U.S.C. 3717.

Section 562.44 describes circumstances under which repayment of a fellowship award is deferred.

Section 562.45 describes the length of deferment of repayment.

Section 562.46 describes circumstances under which repayment is waived.

Section 562.47 describes how a fellowship recipient shall account for his or her obligation.

These final regulations will govern all fellowship awards for fiscal year 1985 and will apply to the program until superseded by any future regulations adopted by the Secretary.

Summary of Comments and Responses

On June 24, 1985, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** at 50 FR 26132. The following is a summary of the significant comments received on the NPRM and the Secretary's responses:

Section 562.2 Who is eligible to apply for assistance under the Fellowship Program?

Comment. Several commenters questioned the requirement that Fellows be full-time students.

Response. No change has been made. The requirement that Fellows study full-time is consistent with the program goal of increasing the supply of bilingual education personnel as quickly as possible.

Section 562.5(b) (ii) What does a fellowship award include?

Comment. One commenter questioned the limitation of stipends to students who work fewer than 20 hours per week.

Response. No change has been made. Since the stipend is that part of the fellowship award which is provided as a living subsistence, it is the Secretary's view that persons who are gainfully employed more than 20 hours a week would not be in need of a stipend.

Comment. Several commenters questioned the limitation of $450 per month stipend allowance and $250 per year for books.

Response. No change has been made. Although a comparison of this program with other fellowship programs revealed a slightly higher stipend rate, it was also determined that the other programs considered individual financial need as

basis for awarding stipends. The Secretary also believes that a $250 allowance for books is adequate since recipients can seek other financial aid if necessary.

Section 562.11(b) What criteria does the Secretary use in reviewing applications for participation?

Comment. One commenter questioned the sufficiency of the criteria used to evaluate quality of faculty members. The commenter suggested that the language proficiency of faculty members, status, responsibilities and time commitments should be addressed in this section.

Response. No change has been made. The current criteria are adequate for the purposes of the program.

Section 562.30 How does the Secretary select new Fellows?

Comment. One commenter suggested that the term "special alternative instruction" be inserted in the regulations.

Response. No change has been made. The term "special alternative instruction programs" is included in the definition of "Program of bilingual education" in § 562.4(a). All instructional programs authorized under Part A of the Act are included in the definition.

Comment. One commenter suggested that proficiency in a language other than English is always relevant in the selection of Fellows, and requested that the Secretary deletes the phrase "if applicable" from § 562.30(c)(2).

Response. No change has been made. The Secretary desires maximum flexibility for IHE's in the selection of nominees for fellowships.

Section 562.31 What is the period of a fellowship?

Comment. Several commenters urged the Secretary to reconsider the proposed three year limitation for fellowships to students in doctoral programs. The commenters stated the length of time usually considered standard for the completion of a doctoral program is four years.

Response. No change has been made. The Secretary considers three years to be adequate time for a full-time doctoral student to complete coursework necessary as part of his or her degree program.

Comment. One commenter suggested that the language in § 562.31(d) be revised to read that the Secretary "shall give preference" instead of "may give preference" to renewing students in order to assure continued fellowship support to those recipients who are making satisfactory academic progress in the program.

Response. No change has been made. The Secretary views this approach as appropriate to award fellowships to the most deserving applicants. This approach provides for preference to be given to current recipients when these students are making satisfactory academic progress in the program.

Other Changes

Certain technical revisions have been made to the selection criteria in § 562.11. No substantive changes are intended and no amendments to the applications received for FY 1985 awards are necessary.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

Invitation to comment

The Secretary is issuing these regulations in final form, following an opportunity for public comment in response to the notice of proposed rulemaking and consultation with interested organizations through the National Advisory and Coordination Council on Bilingual Education (NACCBE) consistent with the requirements of the Bilingual Education Act and the General Education Provisions Act. However, the timing in the appointment of the new NACCBE members and the issuance of these particular regulations unfortunately permitted only limited consultation with NACCBE and other interested organizations. Recognizing NACCBE's role, the Secretary would like to provide a fuller opportunity for consultation with NACCBE and for further comments by interested organizations and individuals. The Secretary therefore invites further comments and suggestions on these regulations from any interested organizations or individuals and will carefully consider making appropriate amendments to these regulations, based on any further comments received, in continued consultation with NACCBE.

Among other changes, the Secretary is considering amending these regulations to improve administration and accountability of the program in institutions of higher education. The Secretary specifically proposes to require institutions of higher education to—

- Disburse funds to Fellows by installments,
- Adequately certify satisfactory progress by continuing Fellows,
- Notify the Secretary of any change in a Fellow's student status,
- Reallocate to an alternate Fellow or return to the Secretary any unexpended funds, and
- Maintain adequate financial records.

The Secretary is considering adopting rules similar to 34 CFR 650.40, 650.41(b), 650.43, and 650.44 in the regulations for the National Graduate Fellows Program published in this issue of the **Federal Register.**

Interested persons may send comments to the address given at the beginning of this document until October 15, 1985. The Secretary will consider all of these comments.

All comments submitted in response to these regulations will be available for public inspection during and after the comment period in Room 421, Reporters Building, 7th and D Streets, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

List of Subjects in 34 CFR Part 562

Bilingual education, Education, Elementary and Secondary education, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: August 13, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by removing Part 515 and adding a new Part 562 as follows:

PART 515—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM—[REMOVED]

1. Part 515 is removed.

2. A new Part 562 is added to read as follows:

PART 562—BILINGUAL EDUCATION: FELLOWSHIP PROGRAM

Subpart A—General

Sec.

562.1 Fellowship Program.
562.2 Who is eligible to apply for assistance under the Fellowship Program?
562.3 What regulations apply to the Fellowship Program?
562.4 What definitions apply to the Fellowship Program?
562.5 What does a fellowship award include?

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

562.10 How does the Secretary approve IHEs for participation?
562.11 What criteria does the Secretary use in reviewing applications for participation?

Subpart C—How Does an Individual Apply for a Fellowship?

562.20 Where does an individual apply?

Subpart D—How Does the Secretary Select New Fellows?

562.30 How does the Secretary select new Fellows?
562.31 What is the period of a fellowship?

Subpart E—What Conditions Must Be Met by Fellows?

562.40 What is the service requirement for a fellowship?
562.41 What are the requirements for repayment of the fellowship?
562.42 What is the repayment schedule?
562.43 What interest is charged?
562.44 Under what circumstances is repayment deferred?
562.45 What is the length of the deferment of payment?
562.46 Under what circumstances is repayment waived?
562.47 How shall the recipient account for his or her obligation?

Authority: Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 98-511, 98 Stat 2370 (20 U.S.C. 3221-3262), unless otherwise noted.

Subpart A—General

§ 562.1 Fellowship Program.

The Fellowship Program provides financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs of bilingual education such as teacher training, program administration, research and evaluation, and curriculum development.

(20 U.S.C. 3253)

§ 562.2 Who is eligible to apply for assistance under the Fellowship Program?

(a) An institution of higher education (IHE) that offers a program of study leading to a degree above the bachelor's level as described in § 562.1 may apply for participation in the Fellowship Program.

(b) An individual is eligible to apply for a fellowship under this program if the individual—

(1)(i) Is a citizen, a national, or a permanent resident of the United States;

(ii) Is in the United States for other than a temporary purpose and can provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident; or

(iii) Is a permanent resident of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territories of the Pacific Islands; and

(2) Has been accepted for enrollment as a full-time student in a course of study offered by an IHE approved for participation in the program.

(20 U.S.C. 3253)

§ 562.3 What regulations apply to the Fellowship Program?

The following requirements apply to the Fellowship Program:

(a) The regulations relating to proof of nonprofit status in 34 CFR 75.51.

(b) The regulations in this Part 562.

(20 U.S.C. 3253)

§ 562.4 What definitions apply to the Fellowship Program?

The following definitions apply to Part 562:

(a) "Program of bilingual education" means any instructional program authorized under Part A of the Act.

(b) The definitions in 34 CFR 500.4 apply to awards made subsequent to Fiscal Year 1985.

(20 U.S.C. 3231-3262)

§ 562.5 What does a fellowship award include?

(a) *Allowable costs.* A student may use Fellowship funds under the program for—

(1) Tuition and fees—the normal and usual costs associated with the course of study;

(2) Books—up to $250;

(3) Travel—up to $250 for travel to field-study site; and

(4) A stipend, subject to the restrictions in paragraph (b) of this section.

(b) *Stipends.* (1) An individual may receive a Fellowship stipend if he or she is—

(i) A full-time student in a program of study which was approved by the Secretary in accordance with § 562.10; and

(ii) Not gainfully employed more than 20 hours a week or the annual equivalent.

(2) A stipend for an individual participating in the Fellowship Program may not exceed $450 per month.

(20 U.S.C. 3255)

Subpart B—How Does an Institution of Higher Education (IHE) Obtain Approval of Its Application for Participation?

§ 562.10 How does the Secretary approve IHEs for participation?

(a)(1) The Secretary determines whether to approve an IHE for participation with regard to each proposed language curriculum based on the quality of the application using the criteria listed in § 562.11.

(2) The Secretary awards up to a maximum of 100 points for all the criteria.

(3) The maximum possible score for each criterion is indicated in parentheses following the heading for each criterion.

(b) After the IHE's application has been evaluated according to the selection criteria, the Secretary rank orders the application.

(c) Following the rank order, the Secretary then designates the maximum number of fellowships by language curriculum that may be awarded at each IHE—

(1) Based on the IHE's capacity to provide graduate training in the areas proposed for fellowship recipients; and

(2) To the extent feasible, in proportion to the needs of various groups of individuals with limited English proficiency within the geographic area.

(20 U.S.C. 3253(a), 3254)

(Approved by the Office of Management and Budget under control number 1885-0001)

§ 562.11 What criteria does the Secretary use in reviewing applications for participation?

(a) *Institutional commitment.* (25 points)

(1) The Secretary reviews each application to determine the quality of the IHE's graduate program of study.

(2) The Secretary considers—

(i) The extent to which the program has been adopted as a permanent graduate program of study;

(ii) The organizational placement of the program;

(iii) The staff and resources which the IHE has committed to the program; and

(iv) The IHE's demonstrated competence and experience in programs and activities such as those authorized under Title VII of the Elementary and Secondary Education Act of 1965, as amended.

(b) *Quality of faculty members.* (20 points)

(1) The Secretary reviews each application to determine the qualifications of the faculty in the academic area.

(2) The Secretary considers the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(c) *Quality of the instructional program.* (20 points)

(1) The Secretary considers the quality of the applicant's program of instruction.

(2) The Secretary considers—

(i) In the case of projects designed to prepare educational personnel for bilingual education programs that use English and a language other than English, whether the project incorporates the use of both English and a language other than English, to the extent necessary to develop the participants' competencies as bilingual education personnel;

(ii) The quality of the standards used to determine satisfactory progress in and completion of the program; and

(iii) The interdisciplinary aspects of the program.

(d) *Field based experience.* (15 points) The Secretary reviews each application to determine the extent to which the program provides field based experience through arrangements with local educational agencies (LEAs), State educational agencies (SEAs) and persons or organizations with expertise in programs of bilingual education.

(e) *Evidence of local or national need.* (10 points) The Secretary reviews each application to determine the need for more individuals trained above the bachelor's level in proportion to the needs of various groups of individuals with limited English proficiency in the local area, and throughout the country.

(f) *Recruitment plan.* (10 points) The Secretary considers the IHE's plans for recruiting and selecting nominees using the criteria listed in § 562.30 (b) and (c).

(20 U.S.C. 3253(a))

(Approved by the Office of Management and Budget under control number 1885-0001)

Subpart C—How Does an Individual Apply for a Fellowship?

§ 562.20 Where does an individual apply?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) Each participating IHE may establish procedures for receipt of applications from individuals.

(20 U.S.C. 3253(a))

Subpart D—How Does the Secretary Select New Fellows?

§ 562.30 How does the Secretary select new Fellows?

(a) The Secretary selects Fellows taking into consideration the rank orders prepared by the IHE, subject to the maximum number of fellowships per language curriculum designated for that IHE.

(b) The Secretary gives preference to individuals intending to study programs of bilingual education for limited English proficient students in the following specialized areas:

(1) Vocational education.

(2) Adult education.

(3) Gifted and talented education.

(4) Special education.

(5) Education technology.

(6) Literacy.

(7) Mathematics and science education.

(c) In recommending nominees, an IHE shall consider the following criteria:

(1) *Academic record.* The quality of the academic record of the applicant.

(2) *Language proficiency.* The applicant's proficiency in English and, if applicable, the language(s) to be studied.

(3) *Experience.* The extent of the applicant's experience in providing services to, teaching in, or administering programs of bilingual education.

(20 U.S.C. 3253(a))

(Approved by the Office of Management and Budget under control number 1885-0001)

§ 562.31 What is the period of a fellowship?

(a) Except as provided in paragraph (b) of this section—

(1) Fellowships may be awarded for a maximum of two one-year periods to a student who maintains satisfactory progress in a post-baccalaureate program of study; and

(2) Fellowships may be awarded for a maximum of three one-year periods to a student who maintains satisfactory progress in a doctoral program of study.

(b) Subject to the availability of funds and where adequate justification is provided by an IHE, the Secretary may extend a fellowship beyond the maximum period to a recipient who, for circumstances beyond his or her control, is not able to complete the program of study in that period.

(c) A recipient of a fellowship who seeks assistance beyond the initial one-year period must be renominated by the participating IHE.

(d) The Secretary may give preference to recipients in their second or third year who maintain satisfactory progress in the program of study prior to approving nominations of new students.

(20 U.S.C. 3253 (a))

Subpart E—What Conditions Must Be Met by Fellows?

§ 562.40 What is the service requirement for a fellowship?

(a) Upon selection for a fellowship, the recipient shall sign an agreement provided by the Secretary to work for a period equivalent to the period of time that the recipient receives assistance under the fellowship in one or more of the following activities:

(1) Training personnel to develop and conduct programs of bilingual education or teacher training programs at IHEs.

(2) Conducting research related to programs of bilingual education.

(3) Administering programs of bilingual education.

(4) Conducting evaluations of programs of bilingual education.

(5) Developing curriculum materials designed for programs of bilingual education.

(6) Working in any other activity, approved in advance by the Secretary in accordance with the procedures in § 562.47, which is related to programs and activities such as those authorized under Title VII.

(b) A recipient shall begin working in one or more of the activities listed in paragraphs (a)(1)–(6) of this section within six months of the date the recipient ceases to be enrolled at an IHE as a full-time student.

(20 U.S.C. 3253(c))

§ 562.41 What are the requirements for repayment of the fellowship?

(a) If a recipient does not work in one of the activities described in

§ 562.40(a)(1)–(6), he or she shall repay the full amount of the fellowship.

(b) The Secretary prorates the amount a recipient is required to repay based on the length of time the recipient worked in an authorized activity compared with the length of time during which he or she received assistance.

(20 U.S.C. 3253(c))

§ 562.42 What is the repayment schedule?

(a) A recipient required to repay all or part of the amount of a fellowship shall—

(1) Begin repayments within six months of the date he or she ceases to be enrolled as a full-time student at an IHE in the Fellowship program; or

(2) Begin repayments on a date and in a manner established by the Secretary, if he or she ceases to work in an authorized activity, of the prorated amount of his or her obligation.

(b) A recipient must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary. This period may be extended if the Secretary grants a deferment under § 562.44.

(20 U.S.C. 3253(c))

§ 562.43 What interest is charged?

(a) The Secretary charges a recipient interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 562.44.

(20 U.S.C. 3253(c))

§ 562.44 Under what circumstances is repayment deferred?

The Secretary may defer repayment if the recipient—

(a) Suffers from a serious physical or mental disability that prevents or substantially impairs the recipient's employability in one of the activities described in § 562.40(a)(1)–(6);

(b) Demonstrates to the Secretary's satisfaction that he or she is conscientiously seeking but unable to secure employment in one of the activities described in § 562.40(a)(1)–(6);

(c) Re-enrolls as a full-time student at an IHE;

(d) Is a member of the Armed Forces of the United States on active duty;

(e) Is in service as a volunteer under the Peace Corps Act; or

(f) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(20 U.S.C. 3253(c))

§ 562.45 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(20 U.S.C. 3253(c))

§ 562.46 Under what circumstances is repayment waived?

The Secretary may waive repayment if the recipient demonstrates the existence of extraordinary circumstances that justify a waiver.

(20 U.S.C. 3253(c))

§ 562.47 How shall the recipient account for his or her obligation?

(a) Within six months of the date a recipient ceases to be enrolled as a full-time student at an IHE, the recipient shall submit to the Secretary one of the following items:

(1) A description of the employment in an activity listed in § 562.40(a)(1)–(6) in which he or she is employed.

(2) Repayment required under §§ 562.41–562.42.

(3) A request to repay the obligation in installments.

(4) A request for a deferment or waiver as described in §§ 562.44–562.46 accompanied by a statement of justification.

(b) A recipient who submits a description of employment under paragraph (a)(1) of this section shall notify the Secretary on a yearly basis of the period of time during the preceding year that he or she was employed in the activity.

(c) A recipient shall inform the Secretary of any change in his or her employment status.

(d) A recipient shall inform the Secretary of any change in his or her address.

(20 U.S.C. 3253(c))

(Approved by the Office of Management and Budget under control number 1885–0001)

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August 16, 1985

Part IX

Department of Energy

Western Area Power Administration

Sacramento Area Office; Central Valley Project; Proposed Final Withdrawal Procedures; Notice

DEPARTMENT OF ENERGY

Western Area Power Administration

Sacramento Area Office; Central Valley Project Withdrawal Procedure

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of proposed final withdrawal procedures.

SUMMARY: The Sacramento Area Office of the Western Area Power Administration (Western) is issuing this notice of proposed final procedures for withdrawal of Central Valley Project (CVP) power allocations from its customers under varying circumstances prescribed by law. This notice also contains proposed final criteria governing the allocation and service of power to preference customers in Trinity, Tuolumne, and Calaveras Counties with statutory first preference rights to CVP power.

This proceeding is being conducted by Western for the purpose of developing and clarifying methods of withdrawal of CVP power from customers under circumstances prescribed by law or by contract. For further information regarding the specific circumstances prescribed by law or contract, and the proposed procedures and their alternatives, see the **Federal Register** notice dated January 16, 1985 (50 FR 2502, January 16, 1985).

DATES: The schedule for this proceeding has been revised and is given below. Persons planning to speak at the information/comment forum should provide their names and affiliation, in writing or by phone, to the address noted below at least 3 days prior to the date of the forum so that time may be set aside on the forum agenda for each speaker to present any prepared comments.

Public Information/Comment Forum—September 17, 1985, 10 a.m. in the Comstock Room II, Sacramento Inn, 1401 Ardenway, Sacramento, California.

Written Comments Due on Proposed Final Withdrawal Procedures—Due no later than 4:30 p.m. local time on October 4, 1985. Comments must be mailed or delivered to the address given below.

Publication of Final Procedures—October 31, 1985.

ADDRESS: For further information concerning this proceeding contact: Mr. David G. Coleman, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento CA 95825, Phone: (916) 978-4418.

Summary of Customer and Illustrative Examples—Western has prepared a booklet of all customer comments, a booklet of responses to the customer comments, and a booklet of illustrated examples (illustrating the execution of the Withdrawal Procedures). These booklets will be mailed to all customers and interested parties at least a week prior to the public comment forum specified above. These booklets will also be made available upon request. Such requests may be in writing or by phone to the address given above.

Proposed Procedures

1. Explanation of Terms

1.1 *Anniversary Date* means the successive 5th year anniversary of the date the Secretary of the Interior declared the availability of power from the powerplants in the Counties of Origin. The next Anniversary Date for First Preference Customers in Trinity County is January 1, 1987, and for First Preference Customers in Tuolumne and Calaveras Counties is April 5, 1987.

1.2 *Annual Average Generation* when used in reference to the entitlements of First Preference Customers means the average output of the plants located in the Counties of Origin as presented in Western's official planning forecast (see procedure 3.3 definition of variable A).

1.3 *Average Annual Load Factor or AALF* means the average of the most current 12 monthly load factors available, preceding the determination of the Maximum Entitlement of First Preference Customers.

1.4 *Project Auxiliary Service* for the purpose of these procedures, means power, other than Project Use, required to meet the needs of the CVP for such purposes as station service, plant load, lighting, station office loads, and other purposes, as determined by Western, necessary for supporting the operations of the CVP. This power is deducted from gross generation prior to determining the amount of power available for project pumping and preference sales.

1.5 *Contract 2948A or 2948A* means Contract No. 14-06-200-2948A, dated July 13, 1967, between Western and the Pacific Gas and Electric Company (PGandE) as amended, supplemented, replaced or superseded.

1.6 *Contract Rate of Delivery or CRD* means the amount of capacity allocated to a Contractor pursuant to power sales contracts between Western and such Contractor to provide firm electric power from the CVP.

1.7 *Counties of Origin* means Trinity, Calaveras, or Tuolumne Counties.

1.8 *Diversity Allocation* means allocations of CVP power made in accordance with the Power Marketing Plan of 1981 and sold pursuant to Diversity Contracts.

1.9 *Diversity Contracts* means those contracts with the National Aeronautics and Space Administration (NASA-Ames) and the Department of Energy (DOE) Laboratories providing for additional CVP allocations to such customers in exchange for their participation in Western's load control program.

1.10 *Firm CRD* means any power sale described herein which is not referred to as a Diversity Allocation, Renewable Resource Allocation, Type I Withdrawable Power, Type II Withdrawable Power, or Westlands Withdrawable Power.

1.11 *First Preference Customers* means those CVP customers in either Trinity, Tuolumne, or Calaveras Counties, as the case may be, which have satisfied the statutory requirements according to Reclamation Law for a right to power service of up to 25 percent of the additional power made available from the CVP power system as a result of the construction of the Trinity Division of the CVP or the New Melones Powerplant and their integration with the CVP.

1.12. *Load level* means the maximum allowable simultaneous demand for power during any month of all of those CVP customers whose CRD's are designated as contributing to the simultaneous demand.

1.13 *Maximum Entitlements of First Preference Customers (MEFPC)* means the maximum amount of power which is available to satisfy the rights of First Preference Customers. Such amounts will be calculated for preference customers located in Trinity County, and separately for preference customers locate in Calaveras and Tuolumne Counties.

1.14 *Maximum Entitlement of Westlands* means the maximum amount of CRD which is available to satisfy Westlands contract rights. Currently this amount is 50 MW, but is subject to reduction as provided herein.

1.15 *Maximum Simultaneous Demand or MSD* means the maximum level of simultaneous customer demand for power of preference customers of the CVP at the 1,152 MW load level, adjusted for losses to the CVP load center, in accordance with the provisions of Contract 2948A and the Santa Clara Settlement.

1.16 *Power Marketing Plan of 1981* means that Power marketing Plan created to market the additional 102

MW of MSD made available as a result of the Santa Clara Settlement (46 FR 51224, October 16, 1981).

1.17 *Project Use*, for the purposes of these procedures, means the power from the CVP required to operate the pumping facilities of the CVP. As such this definition refers only to the pumping aspects of the CVP and does not include the power required to fulfill the other needs of the project (see the definition for Project Auxiliary Service).

1.18 *Renewable Resource Allocation* means allocations of CVP power made in accordance with the 1981 Power Marketing Plan and sold pursuant to Western's Renewable Resource Contracts.

1.19 *Renewable Resource Contracts* means those contracts with Western customers, providing Renewable Resource Allocations in exchange for renewable resource or cogeneration development by the customer.

1.20 *Santa Clara Settlement or MOU* means the Memorandum of Understanding among Western, PGandE, the city of Santa Clara, and other CVP customers, dated February 8, 1980, providing for settlement of issues raised in the case of the City of Santa Clara v. Andrus, 572 F. 2d 660 (9th Cir. 1978), cert. denied, 439 U.S. 859 (1978), and for PGandE's agreement to allow Western the option of increasing the load level from 1,050 MW to 1,152 MW.

1.21 *Type I Withdrawable Power or Type I* means that portion of a customer's CDR which may be reduced by Western to maintain the 925 MW load level.

1.22 *Type II Withdrawable Power or Type II* means the 60 MW portion of the city of Santa Clara's CRD which may be reduced by Western to maintain the 1,050 MW load level pursuant to the Santa Clara Settlement.

2. Withdrawals to Serve Project Use

Under Western's existing contract with PGand E, its imports from the Northwest, and the low growth rate of Project Use, there is no immediate need to withdraw power for Project Use. Therefore, at this time, Western will not be formulating procedures for withdrawals to serve Project Use. Such procedures will be promulgated when the need for Project Use withdrawals arises.

3. Allocations to First Preference Customers

3.1 Western will seve the First Preference Customers from the capacity available under the 1,152 load level. Withdrawals of power required to provide such service will be as provided in sections 4 and 6 herein.

3.2 First Preference Customers will be subject to a minimum bill. The minimum bill will be computed as the CRD times the applicable CVP capacity rate in effect during the billing period.

3.3 MEFPC is an annual number, which can vary from year to year, and is determined for each year of a 5-year period in advance, once every 5 years, in accordance with the following formula:

MEFPC = (A − L − P)*0.25

Where:

A—The Annual Average Generation of the plants in the Counties of Origin taken from the Western Long-Term Annual Average Generation Study (AAGS) done for the Power Repayment Study. The AAGS used shall be the most recent AAGS available prior to the Anniversary Date for initial allocations in the respective County or Counties of Origin.

L—Transmission losses from generation to the CVP load center (currently 4 percent).

P—Project Used Withdrawals apportioned to the New Melones or Trinity River Division (since Project Use Withdrawls have been delayed. P is currently equal to zero).

3.4 CRD requested by First Preference Customers will be converted to an energy entitlement by multiplying the requested by CRD by the AALF of the First Preference Customer and the number of hours in the year (8760) and then adjusting for losses to the CVP load center (AALF*CRD*8760 + losses to the CVP load center). The entitlement so determined will be used to award allocations to requesting First Preference Customers. To convert an entitlement to a CRD, the entitlement will be reduced for losses to the delivery point(s), and the result divided by the product of the AALF and 8760.

3.5 All requests for allocations shall not exceed the peak demand experienced prior to the date of the request or the estimated peak for the year in which the request is made. Western reserves the right to reduce any request which in Western's opinion is unreasonable.

3.6 If the request(s) of First Preference Customers for power becomes greater than the MEFPC, then Western will distribute the remaining entitlement in the following fashion.

3.6.1 An attempt will be made to first meet the request of First Preference Customers not previously allocated a share of the entitlement before any of the remaining entitlement is distributed in accordance with the formula in 3.6.2.

3.6.2 The remaining entitlement will be distributed among the requesting First Preference Customer(s) in accordance with the following formula:

CE = (IR/TR)*RE

Where:

CE—Customer entitlement rounded to the nearest kWh then converted to a CRD in accordance with procedure 3.4.

IR—Individual amount (CRD) requested by a First Preference Customer (converted to an entitlement in accordance with procedure 3.4, and subject to the conditions of 3.5).

TR—Sum total of all of the IR's.

RE—Amount of the MEFPC remaining (not allocated).

3.7 A First Preference Customer may request an increase in CRD by notifying Western in writing at least 6 months in advance of the month in which the increase is to be effective (increases in CRD's are effective the 1st day of a month). All such requests will be subject to the conditions of 3.5 and 3.6 above.

3.8 The MEFPC's will be redetermined once every 5 years using the AAGS (referred to as the "original AAGS") presented in 3.3 above. If the MEFPC determined from any subsequent AAGS, during the 5-year period, is less than 90 percent or greater than 110 percent of the MEFPC determined from the original AAGS, then Western reserves the right to redetermine the MEFPC based upon the new AAGS.

3.8.1 Should Western choose to redetermine the MEFPC and all of the MEFPC has been allocated, then the allocations of CRD's to the First Preference Customers will be adjusted in accordance with the following formula:

New CRD = (MEFPC/TE)*Old CRD

Where:

CRD = Contract Rate of Delivery

TE = Summation of the energy entitlements of the First Preference Customers in the County or Countries of Origin calculated as the sum of:

AALF*Old CRD*8760 + losses (to the CVP load center)

3.8.2 Should Western decide to change the MEFPC, then Western will inform the affected First Preference Customers of the change in the MEFPC and any resultant changes in their CRD's in writing at least 6 months in advance.

3.9 The CRD's of First Preference Customers, determined in accordance with the above procedures and by application of reclamation law are not withdrawable for load level withdrawals.

3.10 First Preference Customers may reduce their CRD's upon 6 months' written notice to Western (subject to the provisions of Article 14(b) of Contract 2948A), unless otherwise agreed by Western.

3.11 All power sales to First Preference Customers are subject to the availability of facilities or the execution of contracts necessary, as determined by Western, to provide for the sale and delivery of CVP power.

3.12 The contract of any First Preference Customer which does not reflect the provisions of these procedures will be modified to be in accordance with these procedures prior to granting any increase in CRD to such First Preference Customer.

4. Withdrawals To Serve the Rights of First Preference Customers

4.1 First Preference Customer withdrawals, under this section 4, will be made only for First Preference Customers in Tuolumne and Calaveras Counties. Such withdrawals shall be initiated as a result of an 1,152 MW load level withdrawal.

4.2 Withdrawals to serve the rights of First Preference Customers in Tuolumne and Calaveras Counties will be made from the Firm CRD of the customers subject to such withdrawal.

4.3 CRD allocated to Westlands is withdrawable to serve the rights of First Preference Customers. Such withdrawals will reduce the entitlement of Westlands, and will necessitate a Westlands Withdrawal (see section 5).

4.4 Should a First Preference Customer withdrawal become necessary (as the result of an 1,152 MW load level withdrawal), then withdrawals will be made in accordance with the following formula:

WD=A*(P/SP)

Where:

WD—The amount to be withdrawn from the customer's CRD (rounded up to the nearest kW).

A—The total amount of CRD withdrawn from First Preference Customers in Tuolumne and Calaveras Counties as a result of an 1,152 MW load level withdrawal.

P—The total CRD of the customer.

SP—The sum of all the customer P's.

4.5 The formula given in 4.4 will be repeated, as necessary, until the sum of the WD's is greater than or equal to A. Withdrawals of CRD made pursuant to this section 4, to satisfy the rights of the First Preference Customers, will be subject to the limitations of procedures 6.4 and 6.5.3.

4.6 Should a withdrawal become necessary, Western will notify the affected customers at least 17 months in advance of such withdrawals. Notification of a pending 1,152 MW load level withdrawal will constitute notification of a pending First Preference Customer withdrawal.

4.7 There will be no separate reinstatement of power withdrawn to serve a First Preference Customer.

5. Withdrawals To Serve Westlands Water District

5.1 For the term of its CVP power sales contract and for the purposes specified in such contract, Westlands is entitled to increase its CRD up to a total CRD of 50 MW, except as reduced by withdrawals described in these procedures.

5.2 Only those customers receiving allocations of Westlands Withdrawable Power, as a result of the Power Marketing Plan of 1981, are subject to Westlands withdrawals. The amount of power allocated to such customers was determined in the following fashion:

WW=(TWWA/(TOACRD−10 MW))*OCRD=0.7095*OCRD

Where:

WW—The Westlands withdrawable portion of a customer's CRD.

TWWA—The original entitlement of Westlands (50 MW) less Westlands CRD as of March 1, 1983 (41.15 MW).

TOACRD—Total of the original allocations to those customers with Westlands Withdrawable Power (68 MW).

OCRD—Original allocation of power from the Power Marketing Plan of 1981.

5.3 Westlands Withdrawable Power will be reduced to satisfy the needs of Westlands Water District as a result of a request for an increase in CRD from Westlands, as the result of a First Preference Customer withdrawal, or as a result of an 1,152 MW load level withdrawal.

5.4 Should a withdrawal be necessary, withdrawals will be made in accordance with the following formula:

WD=A*(WW/WWS)

Where:

WD—Amount of Westlands withdrawable CRD to be deducted from a customer's CRD (rounded up to the nearest kW).

A—Total amount of CRD to be withdrawn.

WW—The Westlands Withdrawable Power of a customer prior to the withdrawal.

WWS—The sum of the WW's of all of the customers.

5.5 Western will notify the affected customers at least 90 days in advance in writing of any pending withdrawals. Notice of a pending 1,152 load level withdrawal will constitute notification of a pending Westlands withdrawal.

5.6 Should Westlands Withdrawable Power become available for reinstatement, it shall be reinstated in accordance with section 7 of these procedures.

6. Load Level Withdrawals

6.1 In any month in which a load level is exceeded, Western will withdraw power according to the procedures described below.

6.2 Withdrawals at the 925 and 1,050 MW load level will be completed before any withdrawals are made at the 1,152 MW load level. Western does not anticipate changing the procedures currently used to withdraw at the 925 and 1,050 MW load level.

6.3 All withdrawals of power at the 1,152 MW load level will be made from a customer's Firm CRD (as provided in Procedure 6.5 below).

6.4 No customer's Firm CRD will be reduced below 0.5 MW, unless, as determined by Western, such reduction is necessary to comply with reclamation law.

6.5 Withdrawals of CRD to satisfy the 1,152 MW load level limit will be made in the following order:

6.5.1 Type I Withdrawable Power (as a result of a 925 MW withdrawal).

6.5.2 Type II Withdrawable Power (as a result of a 1,050 MW load level withdrawal).

6.5.3 Twenty percent of a customer's Firm CRD, unless otherwise specified by contract.

6.6 Should the 1,152 MW load level be exceeded, then Western will withdraw from its customers using the following formula:

WD=A*(C/MSD)

Where:

WD—Amount of CRD to be withdrawn from a customer (rounded up to the nearest kW).

A—Total amount to be withdrawn (MSD—1,152 MW).

C—The contribution of the customer to the MSD.

MSD—The Maximum Simultaneous Demand of the Western system at the 1,152 MW load level (should equal the sum of the C's).

6.7 The formula given in 6.6 will be repeated, as necessary, until the sum of the C's (redetermined after withdrawal) is less than or equal to 1,152 MW.

6.8 First Preference Customers in Trinity, Tuolumne, and Calaveras Counties are not subject to load level withdrawals. First Preference Customers in Tuolumne and Calaveras Counties will be included in the 1,152 MW load level withdrawals, necessitating a First Preference Customer withdrawal, immediately following the 1,152 load level withdrawal, to restore the power withdrawn from the customers in Tuolumne and Calaveras Counties. This withdrawal will be subject to the terms

and conditions of section 4 of these procedures.

6.9 Following the withdrawal for First Preference Customers, a Westlands withdrawal will be made, as required, to serve the needs of Westlands Water District. This withdrawal will be subject to the terms and conditions of section 5 of these procedures. The amount of CRD to be withdrawn will be the sum of the amount withdrawn from Westlands to serve the needs of the 1,152 MW load level, and the needs of the First Preference Customers in Tuolumne and Calaveras Counties.

6.10 If, during the 12 months following a withdrawal to meet the 1,152 MW load level, there have been no such additional withdrawals, CRD's which have been reduced to meet the 1,152 MW load level will be reinstated effective on the 1st day of the 13th month following the month of withdrawal, subject to any agreement determined by Western to be necessary with PG&E prior to such reinstatement. Power reinstated will be subject to the terms and conditions of section 7 of these procedures.

6.11 Western will engage in a load monitoring system and will promote its own and customer load control programs to minimize withdrawals of power. In this regard, Western will provide incentives (including rate discounts and possible early reinstatements of power) for load management and control for customers which materially contribute (as determined by Western) to Western's programs.

6.12 Western reserves the right to include the First Preference Customer loads in that load level which will minimize withdrawals from all of its customers.

Reinstatement of Power

7.1 Except as provided in procedures 7.2 through 7.4, all reinstatements will be made in accordance with the following formula:

$AR = A^* (AW/SAW)$

Where:

AR—Amount of CRD to be reinstated to the customer.
A—Amount of CRD or power to be reinstated.
AW—Amount of CRD withdrawn from the customer prior to reinstatement.
SAW—Sum of the AW's.

7.2 The amount of power to be reinstated for an 1,152 MW load level reinstatement will be the difference between the highest Maximum Simultaneous Demand during the 12-month period following the month of withdrawal and 1,152 MW or the total amount withdrawn to date, whichever is less. The amount withdrawn (AW) will include withdrawals made to serve the rights of First Preference Customers.

7.3 The computation presented in procedure 7.1 will be rounded up to the nearest kW and repeated until such time that the difference between the MSD and 1,152 MW equals zero or until no further reinstatements can be made without causing the MSD to exceed 1,152 MW.

7.4 The amount of power to be reinstated for a Westlands Withdrawable Power reinstatement will be the amount of CRD returned to Western by Westlands, the amount of the entitlement returned to Westlands as a result of a 1,152 MW load level reinstatement, or the amount withdrawn, whichever is less.

7.5 The computation presented in procedure 7.1 will be rounded down to the nearest kW to ensure that the sum of the reinstated CRD's is less than or equal to the amount to be reinstated (the sum of the AR's is less than or equal to A).

7.6 Western reserves the right to deny any reinstatement of power if in Western's opinion circumstances warrant such denial.

SUPPLEMENTARY INFORMATION:

Following is a statement of rationale for each of the proposed procedures:

Procedure 2: Under Contract 2948A, it is not necessary for Western to make Project Use withdrawals. This is because Project Use and Project Auxiliary Service are first supplied from the Project facilities, and the remaining CVP hydrogeneration is available for serving Preference Customer loads. The deficiency, if any, between the supported customer load and the hydrogeneration is purchased from PGandE or other resources. The net impact of an increase in Project Use is an increase in purchases rather than a reduction in the load served. In addition, current Bureau of Reclamation forecasts show little growth in Project loads. Therefore, Western does not anticipate making Project Use withdrawals. If it should appear that Project Use withdrawals may be required, Western will develop appropriate procedures at that time.

Procedure 3.1: Western has selected this procedure for dealing with the First Preference Customer withdrawals as a means of distributing the benefits of Federal power to the greatest extent possible, while minimizing and equitably sharing the impact of withdrawals on all customers.

Procedure 3.2: Western feels that the intent of reclamation law was to see that the entitlement provided by that law was distributed over the entire county involved and not just to a select few within the county. Recognizing that Western is extremely limited in its ability to ensure even distribution, the minimum bill provision is meant to encourage each utility in the county to request only the allocations it will use. Even with this limitation (at a 60-percent load factor), a customer would have to be using less than 40 percent of its CRD to receive a penalty. This does not appear to be a severe constraint to these customers, even under the most adverse circumstances.

Procedure 3.3: Western has interpreted the phrase, "additional electric energy," as its appears in reclamation law, to mean the average gross output of the plants in the County or Counties of Origin less the plant's share of Project Use and Project Auxiliary Service (realistically, this is all that is available to serve any preference customer since the needs of the Project take precedent over preference power sales). In addition, since CRD's are allocated at delivery point and not at the generator, the sale of power to preference customers, via a CRD allocation, must be adjusted for the losses required to get the power from the generator to the point of delivery. Consequently, Western has selected Alternative 1 of the entitlement forumlas as the means of determining the magnitude of the First Preference Customer allocations. However, recognizing that other preference allocations are not reduced for the effects of increased Project Use, Western has decided to extend this feature of its Power Marketing Program to the First Preference Customers (since they pay for it in Western's rates). Doing so will require that the MEFPC be reduced if and when Project Use withdrawals are required. Consequently, the P in Alternative 1 has been defined as the Project Use withdrawals apportioned to the plants located in the Counties of Origin. The exact details of the apportionment will be part of any future procedures developed to deal with Project Use withdrawals.

Western has rejected Alternative 2 because it does not embody Western's interpretation of the phrase "additional electric energy," nor does it take into account the circumstances related to the delivery of power from the generator to the customer.

Western has rejected Alternative 3 because it would base the entitlement and subsequent allocations of First Preference Customer power on a percentage of total power sold by the

CVP as integrated with PGandE under Contract 2948A. Western does not believe that this method was intended by the First Preference Customer statutes because the entitlement is not just based upon the contribution to the CVP of the specified units. An entitlement so determined would include, within its basis for determination, diversity in the system (a portion of which is there as a result of Western's lead monitoring program), unused allocations of other customers, and the conservation efforts of Western's other customers (which includes but is not limited to direct conservation efforts, high side metering expenditures, and the conversion of some customer receiving systems to voltages higher than 44 kV or direct service). Such a basis for determination of the MEFPC is in Western's opinion not consistent with the intent of reclamation law, or equitable to the other customers. See discussion of Alternatives 1, 2, and 3 in the Federal Register notice dated January 16, 1985 (50 FR 2502, January 16, 1985).

Procedure 3.4: The MEFPC is determined at the CVP load center. To convert the MEFPC to a CRD to be applied at a customer's point(s) of delivery will require that the MEDPC be adjusted for losses from load center to the point(s) of delivery. Since these losses and customer load factors may vary among First Preference Customers, the MEFPC might not be convertible to a CRD. It is the intent of these proceedings that the summation of all the First Preference Customer CRD's (in a County or Counties of Origin) converted to an entitlement in accordance with procedure 3.4, shall not exceed the MEFPC for the County or Counties of Origin.

Procedure 3.5: Western recognizes that there may be some incentive to overstate load projections to obtain the remaining MEFPC to exclusion of other First Preference Customers. To preclude this from happening, Western will examine all requests for reasonableness by comparing them against historical peaks, adjusted for reasonable growth based on historical growth patterns, and further adjusted for anticipated huge increases in load (such as sudden industrial growth or annexations). Should the customer's request exceed Western's estimate of the customer's load, Western will reduce such customer's request to match Western's estimate of that customer's load.

Procedure 3.6.1: Western's "widespread use policy" dictates that Western consider, to the extent possible, allocating First Preference Customer power to those qualifying entities which do not possess an allocation. The inclusion of procedure 3.6.1 attempts to implement this policy.

Procedure 3.6.2: This procedure recognizes that at some point in time, the requests for First Preference Customer power may exceed the available power. It attempts to distribute the remaining power in accordance with the needs of the customers (i.e., their requests).

Procedure 3.7: Six months' notice should give Western sufficient time to evaluate each customer request and allocate additional CRD based upon the customer request.

Given the uncertainty in forecasting loads, Western recognizes that actual loads may exceed requested allocations. If the customer does not possess an auxiliary contract with PGandE (or some other supplier) for the additional load, or if the unauthorized overrun is small, Western will generally (with PG and E's concurrence) agree to serve the unauthorized overrun at ten times the applicable CVP power rates. Should this situation occur, the customer will be responsible for initiating an immediate request for an increase in CRD in accordance with Western's procedure 3.6.

Procedure 3.8: Western believes that determining the MEFPC in advance for an extended period will make the administration of the First Preference Customer allocations easier. The 5-year period was chosen to coincide with the opening of the statutory window for serving new First Preference Customers.

The 10 percent provision was included to ensure that the First Preference Customers, as well as Western's other customers, are protected from adverse conditions not anticipated in the AAGS.

Procedure 3.9: First Preference Customers are entitled up to a fixed percentage of the additional output of the powerplants in the Counties of Origin by Reclamation Law. Since this entitlement can only be reduced to meet the needs of the Project, a load level withdrawal would only reduce a First Preference Customer's current allocation. The resulting lost allocation could be immediately requested by the First Preference Customer, returning its CRD to the before-withdrawal magnitude. The ultimate result is that the load level withdrawal would have no impact on the CRD of the First Preference Customers. Therefore, Western will not subject First Preference Customers to a load level withdrawal.

Procedure 3.10: Western feels that 6-months' advance notice will give it sufficient time to process the reduction and modify its billing records accordingly. Given the manner in which Western is triggering its First Preference Customer withdrawals, it will not be reinstating any power returned by a First Preference Customer. Such returns will be used to serve the loads of the customers at the 1,152 MW load level, which may or may not be reinstated depending upon the MSD at that load level.

Procedure 3.11: As with other power sales contracts, sales of power to First Preference Customers are dependent upon the availability of facilities to deliver the power. To the extent that the availability of facilities is dependent upon the existence of additional contracts, then the sale of power to First Preference Customers will depend upon the existence of such contracts.

Procedure 3.12: Contractual changes might be required to implement these procedures with respect to some First Preference Customers. Western will not grant any increases in CRD to such First Preference Customers until the power sales contract of that customer has been modified to reflect the provisions of these procedures.

Procedure 4.1: First Preference Customers are guaranteed by reclamation law up to 25 percent of the additional output made available to the CVP by the integration of the generating plants in the Counties of Origin into the CVP. Since this quantity is fixed once the MEFPC has been determined, it is not subject to withdrawal for load level, or to serve the loads of other First Preference Customers. As a consequence of this fact, a load level withdrawal (1,152 MW load level withdrawal) will, through the computational process of determining an amount to be withdrawn from each customer, reduce the amount of CRD allocated to a First Preference Customer, precipitating a First Preference Customer withdrawal to restore the withdrawn CRD. Because the customer group for a First Preference Customer withdrawal to serve preference customers in Trinity County is the same as the customer group for a 1,152 MW load level withdrawal, a First Preference Customer withdrawal for preference customers in Trinity County can be eliminated by excluding First Preference Customers in Trinity County from the 1,152 MW load level withdrawal. However, since Sacramento Municipal Utility District (SMUD) is not subject (by contract) to withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties, the customer group for the 1,152 MW load level withdrawal

and a First Preference Customer withdrawal for preference customers in Tuolumne and Calaveras Counties is not the same, and therefore, a First Preference Customer withdrawal for preference customers in Tuolumne and Calaveras Counties will have to be initiated each time there is an 1,152 MW load level withdrawal.

Procedure 4.2: First Preference Customers in Trinity are exempt from withdrawal and SMUD currently has a contract exemption from withdrawals to serve First Preference Customers in Tuolumne and Calaveras Counties.

Procedure 4.3: A Westlands Withdrawal will be necessary only to the extent that Westlands' entitlement exceeds its CRD. Prior to that time, any withdrawal of CRD from Westlands will result in a request from Westlands for additional CRD from their entitlement, forcing a Westlands withdrawal. The net effect of this whole process is that each time there is a First Preference Customer withdrawal, there will be a subsequent Westlands withdrawal, and the amount of Westlands CRD to be withdrawn will equal the amount of CRD withdrawn from Westlands to serve the rights of the First Preference Customers.

Procedure 4.4: Since SMUD has been excluded from First Preference Customer withdrawals, the 20 percent provision in the definition of "P" in the proposed procedures is no longer necessary, and has been changed to total CRD to simplify the computational procedures.

Procedure 4.5: Because the 0.5 MW limit on withdrawal is not removed from P prior to the computations, multiple iterations of the formula in procedure 4.5 may be required to complete the withdrawal.

Procedure 4.6: Since Western expects that sometime within the next 18 to 24 months the Western system wil be capable to exceeding the 1,152 MW load level limit at any time, necessitating a 1,152 MW load level withdrawal, First Preference Customer withdrawal, and a Westlands withdrawal, Western intends to issue a notice this spring to all CVP customers of pending withdrawals to be effective 17 months from the date of the letter and remain effective until the expiration of most contracts in the year 2004.

The 17-month notice period is consistent with the longest notification period in any of Western's customer power sales contracts.

Procedure 4.7: Since reductions in CRD by First Preference Customers either will not affect the MSD or will be manifested in a reduced MSD, and possibly a reinstatement of power at the 1,152 MW load level, Western will not separately reinstate withdrawals of power for First Preference Customers.

Procedure 5.1: See Supplementary Information procedure 4.3.

Procedure 5.2: Since Western has taken the position that no customer shall have its CRD reduced below 0.5 MW, and because some of Western's customers have CRD's equal to 0.5 MW, the 0.5 MW is Firm CRD and must be removed from a customer's CRD prior to determining the amount of Westlands Withdrawable Power included in a customer's CRD. This adjustment is reflected in the 10 MW (20 customers * 0.5 MW) subtraction from the total of the original allocations of Westlands unused entitlement under the Power Marketing Plan of 1981 in the formula presented in procedure 5.2.

Procedure 5.3: Self Explanatory.

Procedure 5.4: The application of the formula is straightforward. The results are rounded up to ensure that sufficient entitlement is recovered from the allocations of Westlands Withdrawable Power to satisfy the needs of Westlands Water District.

Procedure 5.5: The 90-day advance notice provision is consistent with the longest period required by all of Western's power sales contracts.

Procedure 5.6: Refer to procedure 7.4.

Procedure 6.1 and 6.2: Western reserves the right to change the procedures for withdrawing at the 925 MW and 1,050 MW load levels, but does not anticipate doing so at this time. In addition, no such change will be promulgated without consent of the affected parties, as required.

Procedure 6.3: Withdrawing from a customer's total CRD and not just its Firm CRD, will violate many of the principles and policies Western has adopted to encourage energy conservation, load management, and the widespread use of Federal power. In addition, withdrawing from the total CRD would increase Western's administrative burden by requiring Western to determine and keep track of the withdrawals made from the different categories of CRD. To avoid this problem, Western will determine the amount to be withdrawn based on a customer's contribution to the MSD and subtract it from a customers Firm CRD.

Procedure 6.4: Western in previous withdrawals established a policy of withdrawing until a customer's CRD reached less than 25 kW before it terminated the customer's contract. Once the contract was terminated, the customer ceased to be a customer of Western. The impact of such a policy, given Western reinstatement policy, was to shift that CRD to the larger customers at the expense of the smaller customers. Western no longer considers this an equitable policy, and therefore, has decided to place a limit on the amount of CRD that can be withdrawn from a customer. At 0.5 MW the average annual cost of serving a customer roughly equals the revenues obtained from such service. Consequently, it is generally not economic for Western to serve customers with CRD's below 0.5 MW. In addition, Western feels that the policy of guaranteeing all of its customers a CRD of 0.5 MW embodies the principle of its widespread use policy in that each customer is assured that it will remain a customer of Western, and retain benefits from Federal power for the term of the customer's power sales contract.

Procedure 6.5: Western believes that 20 percent of the Firm CRD of all of our customers should be sufficient to serve the needs of the First Preference Customers, and the limitations of the 1,152 MW load level. In addition, the expiration of the Renewable Resource, Diversity, and other Contracts in 1994 offer additional sources of reductions in CRD to support the First Preference Customers as well as the 1,152 load level limit. (It is not Western's intent to announce at this time that any contracts will not be renewed in 1994. Western is simply pointing out that one alternative to further withdrawals, if necessary, is allowing these contracts to expire.

These procedures do not apply to a situation where more power is required to be withdrawn than the amounts listed in procedure 6.5. If it appears that such a situation will exist, Western will formulate additional procedures, as necessary, at that time.

Procedure 6.6: This formula contemplates withdrawing WD from the allocation of a customer whether or not that customer is making full use of the allocation. In this way the formula does not penalize a customer for not using its allocation, although multiple iterations of the formula may be required to reduce the MSD to 1,152 MW. In addition, this formula does not penalize those customers with lower loss factors, or those customers which contribute less to the MSD.

Procedure 6.7: This procedure recognizes that the formula of procedure 6.6 will not yield a number in CRD units. The consequence is that multiple iterations will be required to reduce the MSD to 1,152 MW.

Procedure 6.8: By application of reclamation law, First Preference Customers are not subject to withdrawals to serve load level. It is necessary to include First Preference Customers in Calaveras and Tuolumne

Counties only to satisfy other contractual commitments. The consequence of such action is that each 1,152 MW load level withdrawal will necessitate a First Preference Customer withdrawal to serve the needs of the First Preference Customers in Calaveras and Tuolumne Counties.

Procedure 6.9: Since both the 1,152 MW load level withdrawal and the First Preference Customer withdrawal will reduce Westland's CRD, a Westlands withdrawal may be necessary to restore the withdrawn CRD to Westlands. A Westlands withdrawal may also be necessary any time Westlands requests additional CRD.

Procedure 6.10: Consistent with past practice, Western may reinstate CRD under the conditions described in procedure 6.10 (see section 7).

Procedure 6.11: Western intends to continue its current load control program. In addition, Western is considering reinstating CRD lost as the result of a withdrawal in months when Western's MSD is not expected to exceed 1,152 MW to encourage customer participation in Western's load control program.

Procedure 6.12: Western recognizes that it is possible for a 1,152 load level withdrawal to occur without withdrawals occurring at the 925 or 1,050 MW load levels. Western reserves the right to assign the loads to that load level which will minimize withdrawals to all of its customers.

Procedure 7.1: Western will reinstate Westlands Withdrawable Power or Firm CRD in proportion to the amount of CRD withdrawn.

Procedure 7.2: In the case of a 1,152 load level reinstatement, the amount to be reinstated will be equal to the difference between the MSD and 1,152 MW (MSD—1,152) or the amount of CRD withdrawn to date. A 1,152 MW load level reinstatement will necessitate a reinstatement of Westlands Withdrawable Power.

Procedure 7.3: Since the formula in procedure 7.1, under the conditions of a 1,152 load level reinstatement, will not yield an answer in CRD units, multiple iterations of the formula will be required to complete a reinstatement. Since each iteration of a withdrawal at the 1,152 MW load level involved rounding up, the reinstatement procedure must also employ this rounding mechanism to be equitable to all customers. Any other rounding procedure would require more iterations, which would favor those customers with the greatest amount of power withdrawn. The ultimate result of another procedure would be to shift power from those customers with the least withdrawn CRD (generally those customers with the smaller CRD's), to those customers with the most withdrawn CRD (generally those customers with the larger CRD's).

Procedure 7.4: This procedure contemplates that a Westlands reinstatement may occur if Westlands Water District should return any portion of their allocated CRD to Western, or as a result of a 1,152 MW load level reinstatement, a previously withdrawn portion of the Westlands entitlement is reinstated.

Procedure 7.5: Because normal rounding may result in reinstating more CRD than is available for reinstatement, the results of the computation of procedure 7.1 will be rounded down to the nearest 1 kW.

Procedure 7.6: Conditions may occur which would necessitate a withdrawal of CRD immediately following a reinstatement of CRD. Such an occurrence increases the administrative workload with little, if any, benefit to the customers. In general, if Western determines that the cost or benefits of a reinstatement do not justify the reinstatement, Western, under such circumstances, may deny a reinstatement.

Transition of Procedures—Western has revised the proposed procedures published in the January 16, 1985, **Federal Register** after careful consideration of all comments. In this section of the notice, the relevant and significant issues raised during this proceeding are identified, along with Western's response. As noted in the preamble of this notice, Western's detailed response to each comment is contained in a booklet which will be mailed to all customers and interested parties at least 1-week prior to the public comment forum in this proceeding. The following traces the transition of the withdrawal procedures from the January 16, 1985, proposal to the final proposal presented in this notice.

Withdrawals to Serve Project Use—There were many customer objections to one or more of the provisions presented in section 1 of the proposed procedures. For the reasons described in the Supplementary Information of this **Federal Register** notice, Western decided to postpone the formulation of procedures for Project Use withdrawals. Since Western decided to postpone the formulation of the procedures for Project Use withdrawals, there is no reason to discuss the concepts presented in procedures 1.1 through 1.8 of the proposed procedures, and consequently, section 2 of the proposed final procedures replaces section 1 of the proposed procedures.

Allocations to First Preference Customers—Procedures 3.1 and 3.2 of the final proposed procedures embody the main concept presented by procedures 2.1 and 2.2 of the proposed procedures. Much of the narrative presented in the proposed procedures has been eliminated to emphasize the central concept.

With respect to the alternatives presented in the proposed procedures, a dichotomy developed between Western's preference customers. The First Preference Customers preferred a modified version of Alternative 3, while the remaining customers preferred Alternative 1. Western, for the reasons given in 3.3 of the Supplementary Information, chose the modified version of Alternative 1 presented in procedure 3.3 of the final proposed procedures.

The concept embodied in procedure 2.4 of the proposed procedures has been expanded and included in procedure 3.8 of the final proposed procedures. Many of Western's preference customers objected to the modification of the MEFPC on a yearly basis because it did not give the customer much of a planning horizon. In addition, many customers were concerned that longer term entitlement determinations would not take into account adverse water conditions. The modified version presented in procedure 3.8 attempts to take into account all of these factors by providing for a 5-year predetermination of the MEFPC, monitoring it on a yearly basis to detect adverse changes in water conditions, and reserving the right to modify the MEFPC to mitigate the impact of any adverse conditions.

Procedure 2.5 of the proposed procedures has been split into two parts and incorporated into procedures 3.4 and 3.8 of the final proposed procedures. The first portion of procedure 2.5, which deals with the relationship of the CRD and the MEFPC, has been expanded to become procedure 3.4 in the final proposed procedures. The intent of procedure 3.4 of the final proposed procedures is to explicitly describe the conversion of a CRD to a MEFPC quantity and a MEFPC quantity to a CRD to preclude any questions or confusion which might be caused by the conversion process.

The remaining portion of procedure 2.5 of the proposed procedures has been expanded and explicitly described in procedure 3.8. The expansion was made to avoid any confusion concerning Western's meaning of the phrase "withdraw an amount of the customer's CRD which is proportionate to such excess."

Procedure 2.6 of the proposed procedures is now procedure 3.6 of the proposed final procedures, and has been expanded to describe how allocations will be made if requests for First Preference Customer power exceeds the available remaining MEFPC. This expansion, as with many of the other expansions included in the final proposed procedures, was made in response to comments made by Western's customers.

Based upon customer comments concerning the 1 MW automatic increase in CRD, the shortness of the notification period associated with increases of greater than 1 MW in CRD, and Western's desire that First Preference Customers request only the CRD they will actually use, Western has changed procedure 2.7 of the proposed procedures to expand the notification period to 6 months and eliminate the automatic increase provision presented in the proposed procedures. Procedure 2.7 is now procedure 3.7 of the proposed final procedures.

The essential concept of procedure 2.8 of the proposed procedures is embodied in procedure 3.2.

Procedure 2.9 of the proposed procedures is now procedure 3.10 of the final proposed procedures. Based upon customer comments and Western's reevaluation of its own processing time requirements, the 4 months' advance notice has been changed to 6 months' advance notice. For the reasons given in procedure 3.9 of the Supplementary Information, procedure 3.9 of the final proposed procedures was added.

Procedures 2.10 through 2.10.4 of the proposed procedures, concerning the qualification requirements for becoming a First Preference Customer, have been eliminated. Such requirements are set forth in Reclamation Law and need not be restated in these procedures.

Procedure 3.11 and 3.12 state two important concepts which Western believes should be incorporated in the final proposed procedures. The rationale behind the creation of these new procedures contained in procedures 3.11 and 3.12 of the Supplementary Information of the final proposed procedures.

Withdrawals to Serve the Rights of First Preference Customers—Procedure 3.1 as presented in the proposed procedures has been eliminated. The important concept presented in that procedure (determination of the amount of power to be withdrawn from the CVP customers to satisfy the rights of the First Preference Customers) has been incorporated into the other procedures of the final proposed procedures. The new procedure 4.1 describes the conditions under which a First Preference Customer withdrawal will be accomplished, and essentially incorporates procedure 3.10 of the proposed procedures by specifying that the withdrawal will be initiated by a 1,152 MW load level withdrawal. The rationale for the procedure is presented in procedure 4.1 of the Supplementary Information of the final proposed procedures.

Because of the method chosen by Western to do first preference withdrawals, procedure 3.2 of the proposed procedures is no longer necessary (SMUD is not subject to withdrawals to serve the rights of First Preference Customers in Tuolumne and Calaveras Counties), therefore, procedure 3.2 has been eliminated from the final proposed procedures.

Several of Western's customers have expressed disapproval of proposed procedures 3.3 and 3.5. Western does not agree with the objections presented by these customers. However, in an attempt to satisfy these customers' objections, and simplify the procedures, Western has eliminated these procedures from the final proposed procedures and substituted procedure 4.2 in their place.

The concepts of proposed procedures 3.4 and 3.7 have been incorporated into procedure 4.5 of the final proposed procedures. The apportionment described by procedure 3.7 of the proposed procedures has been changed to reflect the new conditions surrounding the initiation of a first preference withdrawal. The rationale for the change is provided by 4.4 of the Supplementary Information of the final proposed procedures.

Procedure 3.8 has been shortened and is now procedure 4.7 in the final proposed procedures. No separate reinstatement of CRD withdrawn to serve the needs of the First Preference Customers is contemplated by Western. The rationale behind this decision is given in 4.7 of the Supplementary Information of the final proposed procedures.

Western has extended the 90-day notification period of procedure 3.9 of the proposed procedures to 17 months based upon the requests of its customers and the longest notification period required by its customer contracts. This extension is procedure 4.6 in the final proposed procedures. For further information see 4.6 of the Supplementary Information of the final proposed procedures.

Withdrawals to Serve Westlands Water District—The concepts contained in procedures 4.1 through 4.6 of the proposed procedures (procedures 5.1 through 5.6 of the final proposed procedures) have not changed in the final proposed procedures. The formula presented in procedure 4.2 of the proposed procedures has been modified slightly to make it distinguishable from the other formulas presented in the final proposed procedures, procedure 4.3 has been changed to incorporate the current stance on Project Use withdrawals, and A replaces WD in the formula of procedure 4.4 in the proposed procedures.

In addition, procedure 4.5 of the proposed procedures has been expanded into procedures 5.6, 7.4, 7.5, and 7.6 of the final proposed procedures to specifically define the reinstatement process for Westlands Withdrawable Power.

The notice period in the first part of procedure 4.6 of the proposed procedures has been extended to 90 days to make the notification period consistent with the longest notification period required by a customer power sales contract. Procedure 4.6 of the proposed procedures is procedure 5.5 of the final proposed procedures.

Load Level Withdrawals.—There is no change between procedure 5.1 of the proposed procedures and procedure 6.1 of the final proposed procedures.

The specific limitation described by procedure 5.2 of the proposed procedures has been eliminated in favor of the general and more flexible wording of procedure 6.5.3 of the final proposed procedures.

Procedures 5.3 and 5.4 of the proposed procedures have been combined and the basic concept of both procedures has been incorporated into procedure 6.11 of the final proposed procedures. The basic purpose in condensing procedures 5.3 and 5.4 of the proposed procedures was to simplify the procedures by presenting the core concepts contained in the procedures while leaving the details of participation in Western's load monitoring program to the contracts which would govern a customer's participation in Western's load monitoring program.

The basic concept of procedure 5.5 of the proposed procedures is now procedure 6.12 of the final proposed procedures.

Because Western has decided to initiate a First Preference Customer withdrawal after the occurrence of a 1,152 MW load level withdrawal, the notice provisions of the First Preference Customer withdrawal determine or constrain the notice provisions of the 1,152 MW load level withdrawal. Western has satisified both obligations by notifying each customer of pending

withdrawals which may occur any time after August 1987. As a consequence of these developments, procedure 5.6 of the proposed procedures is not necessary and has been eliminated from the final proposed procedures.

Since it is Western's intention not to change the 925 or 1,050 MW load level withdrawal procedures at this time, the core concepts of procedures 5.7 through 5.8.3 of the proposed procedures have been condensed into procedures 6.2, 6.5.1 and 6.5.2 of the final proposed procedures.

The concepts contained in procedures 5.9.1, 5.9.2., 5.9.3.2, and 5.9.3.5 of the proposed procedures have been replaced by procedures 6.1, 6.2, 6.4, 6.5, and 6.8, respectively, of the final proposed procedures. In addition, one of Western's customers, SMUD, has submitted detailed comments explaining why it believes Western's proposal to exempt a portion of all customer's allocations from withdrawal is a violation of a Memorandum of Understanding (MOU) between SMUD and Western. The pertinent provisions of the MOU are discussed in the January 16, 1985 Federal Register notice, at 50 FR 2509. In these proposed final procedures, the basic difference is that the first 290 MW of SMUD's CRD are exempted from withdrawal for any purpose. Other customers have only a 0.5 MW exemption. Furthermore, 19.4 percent of SMUD's firm CRD is subject to withdrawal, while 20 percent of other customers' firm CRD may be withdrawn. As contemplated by the MOU, these proposed final procedures meet both the letter and the spirit of the MOU and other contractual provisions between SMUD and Western.

The limitations provided in procedures 5.9.3.1 and 5.9.3.3 of the proposed procedures have been eliminated and replaced by the general limitation of procedure 6.3 of the final proposed procedures. The rationale for procedure 6.3, and subsequent elimination of procedures 5.9.3.1 and 5.9.3.2, is provided in 6.3 of the Supplementary Information of the final proposed procedures.

The treatment of Westlands Water District in the 1,152 MW load level withdrawal, as described in procedure 5.9.3.4 of the proposed procedures, has been modified to fit the withdrawal procedures formulated by Western in its final proposed procedures. These new procedures are presented in procedure 6.9 of the final proposed procedures.

Western has selected Alternative 2 of procedure 5.9.4 of the proposed procedures for dealing with the 102 MW load level. This alternative provides that there will be no 102 MW load level withdrawal. Western sees no reason to treat those customers, added as a result of an increase in load level, any differently than its other customers when it comes to load level withdrawals, especially since they are already in a less advantageous position because of the Westlands withdrawable power. Consequently, any reference to a 102 MW load level has been eliminated from the final proposed procedures.

Western has selected Alternative 1 of procedure 5.9.5 of the proposed procedures for dealing with 1,152 MW load level withdrawals (procedure 6.6 of the final proposed procedures). Withdrawal of allocations, based upon the principle of customer contribution to the MSD, is the fairest means of withdrawing power allocations when a load level is exceeded. Such a procedure has less impact on those customers that contribute to the system diversity. This procedure is consistent with Western's past practice of making load level withdrawals, and its desire to encourage conservation and load control which benefits all customers.

Based upon customer comments, customer contracts, and Western's reevaluation of relationship of the First Preference Customer withdrawals and Westlands withdrawals to the 1152 MW load level withdrawal (as described by procedure 5.9.6 of the proposed procedures), Western has combined Alternative 1 and Alternative 2 to develop a procedure for dealing with First Preference Customer withdrawals and Westland withdrawals as a result of a 1,152 MW load level withdrawal. The new procedures are presented in procedures 6.8 and 6.9 of the final proposed procedures.

Western has restated procedure 5.9.7 of the proposed procedures in procedure 6.10 of the final proposed procedures. Procedure 5.9.7 has been further expanded to provide a formula for reinstatements in procedures 7.1, 7.2, and 7.3 of the final proposed procedures.

Regulatory Requirements

Regulatory Flexibility Act of 1980—Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western has determined that this proceeding relates to an administrative service of withdrawing power, and therefore is not a rule within the purview of the Regulatory Flexibility Act. Under 5 U.S.C. 6012(2), services are not considered "rules" within the meaning of the act. Therefore, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291—DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

National Environmental Policy Act—Western is required to conduct an environmental evaluation of certain power marketing actions in compliance with the National Environmental Policy Act (NEPA) of 1969, and the DOE regulations published in the Federal Register (45 FR 20694, as amended). Under the DOE guidelines, Western will make an evaluation and determination of the possible environmental impacts of the proposed withdrawal procedures.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for this proceeding will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, California 95825, (916) 440-2084.

Issued at Golden, Colorado, August 9, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-19655 Filed 8-15-85; 8:45 am]

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Federal Register

Friday
August 16, 1985

Part X

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Limitation on the Reimbursement of Nonphysician Medical Services; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-337-P]

Medicare Program; Limitations on the Reimbursement of Nonphysician Medical Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that govern determining reasonable charges for certain nonphysician medical services under the Medicare Supplementary Medical Insurance Program (Part B).

• An additional charge factor would be added to those currently taken into consideration by carriers in determining reasonable charges for nonphysician services, supplies, and equipment that are reimbursed on a reasonable charge basis. This new factor, the "inflation-indexed charge," would represent the reasonable charge from the preceding fee screen year plus an inflation adjustment factor.

• For fee screen years beginning on or after October 1, 1986, the inflation adjustment factor to be used in determining the inflation-indexed charge would be the annual change in the level of the consumer price index for urban consumers for the 12-month period ending on March 31. For the fee screen year beginning on October 1, 1985, the inflation adjustment factor would be zero.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by September 16, 1985.

ADDRESS: Mail comments to: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-337-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C.; or

Room 132, East High Rise Building, 6325 Security Blvd., Baltimore, Maryland.

In commenting, please refer to BERC-337-P. Comments will be available for public inspection, as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., phone (202) 245-7890.

FOR FURTHER INFORMATION CONTACT: Stan Weintraub, (301) 597-5345.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(b)(3) of the Social Security Act (the Act) provides that payment under the Medicare Supplementary Medical Insurance Program (Part B) for physician and other medical services must be based on reasonable charges. Under section 1842(b)(3)(B) of the Act and implementing regulations at 42 CFR 405.502, reasonable charges for a service may not exceed the lowest of—

• Actual charges;

• Physician's or supplier's customary charges;

• Prevailing charges of physicians or suppliers in the locality; or

• Charges applicable for a comparable service, under comparable circumstances, to the policyholders and subscribers of the carrier processing the Medicare claim.

Moreover, other factors, with respect to a specific item or service, that are determined to be appropriate and necessary to use in judging whether charges are inherently reasonable must be considered.

In addition, the paragraph following section 1842(b)(3)(F) of the Act provides that Medicare Part B payments for medical services, supplies, and equipment that generally do not vary significantly in quality from one supplier to another must be based on a reasonable charge that does not exceed the lowest charge level at which the items or services are widely and consistently available in a locality, except to the extent and under the circumstances specified by the Secretary.

As required by the paragraph following section 1842(b)(3)(F) of the Act, customary and prevailing charge levels for non-physician services, other than clinical diagnostic laboratory services, are updated annually on October 1st of each year based on charges in the 12-month period (ending March 31st) and preceding the update.

II. Proposed Changes

While section 1842(b)(3) of the Act requires that customary and prevailing charges be taken into consideration in determining reasonable charges, these are not the exclusive factors that may be considered in determining reasonable charges.

The reasonable charge methodology used to determine reimbursement for Part B services has been criticized as an inherently inflationary system because actual charges, which have continued to increase steadily over time and are not necessarily related to actual costs, affect such subsequent year's reasonable charges. As a control on the rate of increase in Medicare payments for physicians' services, increases in prevailing charges (recognized for reimbursement by Medicare) are limited (as required in the paragraph following section 1842(b)(3)(F) of the Act) to amounts that are justified by appropriate economic index data. On the other hand, year-to-year increases in charges for other Part B services, supplies, and equipment are not currently controlled.

To help control outlays for Part B services, Congress enacted section 2306 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which amended section 1842(b) of the Act by imposing a limitation on physician fees for a 15-month period beginning on July 1, 1984. Furthermore, section 2303 of Pub. L. 98-369 amended section 1833 of the Act to establish fee schedules to control payments for clinical diagnostic laboratory tests in lieu of the reasonable charge determination.

While this recent legislation established fiscal constraints for physician and clinical diagnostic laboratory services, reimbursement for all other Part B services paid for on a reasonable charge basis has been and, continues to be, virtually unconstrained.

It is our view that increases in the level of reimbursement for nonphysician services, supplies, and equipment beyond the general level of increase in the CPI (that is, beyond increases justified by a supplier's or provider's costs) are not reasonable despite increases in customary or prevailing charges.

In addition, we believe that suppliers should focus their attention on the need for efficient delivery of these items and services. Therefore, we are proposing to establish an additional criterion for determining the reasonable charge for purposes of Medicare payment for these items and services. A new § 405.509 would provide the following:

• An additional charge factor would be added to those currently taken into consideration by carriers in determining reasonable charges for nonphysician services, supplies, and equipment that are reimbursed on a reasonable charge basis. This new factor, the "inflation-

indexed charge," would represent the reasonable charge from the preceding fee screen year plus an inflation adjustment factor.

• For fee screen years beginning on or after October 1, 1986, the inflation adjustment factor to be used in determining the inflation-indexed charge would be the annual change in the level of the consumer price index for urban consumers, as compiled by the Bureau of Labor Statistics, for the 12-month period ending on March 31. For the fee screen year beginning on October 1, 1985, the inflation adjustment factor would be zero.

We would also propose conforming changes in §§ 405.502 and 405.511.

In our view, the one-year inflation adjustment factor of zero is justified only in order to compensate for increases in reasonable charges that have occurred over the last several years in excess of the general rate of inflation. We refer the reader to the table on year-to-year percentage increases in section IV.A. of this document. It should be noted that customary and prevailing charges will continue to be calculated and updated as required by section 1842(b)(3) of the Act and these calculations would not be affected by the changes proposed by these regulations. The amount determined as the reasonable charge (that is, currently the lowest of either the actual charge, customary charge, prevailing charge, comparable service charge, inherently reasonable amount, or lowest charge level) would thus also be limited by an inflation-indexed charge applied to FY 1985 reasonable charges in determining FY 1986 reasonable charges. In subsequent years, the reasonable charge inflation adjustment factor would be tied to the annual change in the CPI.

The effect of this proposal would be to apply reimbursement limitations on Part B payments for nonphysician services, supplies, and equipment reimbursed on a reasonable charge basis. These limitations would be similar to those imposed on physician services. The items and services that would be affected by these proposed changes include the following:

• Durable medical equipment (DME), such as oxygen, oxygen equipment, wheelchairs, and hospital beds.

• Ambulance services.

• Prosthetic devices, braces, and artificial limbs and eyes.

• Outpatient physical therapy and speech pathology services.

• Portable X-ray services.

• Certain medical supplies used in connection with home dialysis delivery systems.

This proposal *would not apply* to rural health clinic services, ambulatory surgical center services covered by the facility payment rate, and clinical diagnostic laboratory tests because these services are reimbursed on other than a reasonable charge basis. In addition, this proposal would not apply to services provided on a bill-to-bill basis by health maintenance organizations (HMOs) and competitive medical plans (CMPs). However, for services furnished under arrangements by cost-based HMOs and CMPs, the proposed changes *would apply* to services that are limited by the reasonable charge (see §§ 417.532(a) and 417.546(b)).

It should be noted that, although the Medicare economic index is specifically designed to limit the year-to-year increases in prevailing charges for physicians' services, we are proposing (from October 1, 1986 onward) to use a more general index for these nonphysician services; that is, the CPI for all urban consumers (U.S. city average), as compiled by the Bureau of Labor Statistics. The CPI-Urban is a more appropriate index to use for inflating reasonable charge levels (of nonphysician services, supplies and equipment) than the CPI-medical because the primary goods paid for are wheelchairs, hospital beds, and other equipment. These goods, although fundamentally different in their nature, are subject to similar input cost increases as other manufactured goods whereas the primary components of the CPI-Medical are medical professional services. Moreover, the CPI-Urban is already used to update some other nonphysician services, that is, the clinical diagnostic laboratory fee schedules (section 1833 of the Act). We specifically invite comments on this part of our proposal.

III. Technical Changes

There are two listed items of DME, standard hospital beds and wheelchairs, that are subject to the lowest charge level provisions under section 1842(b)(3)(F) of the Act. Section 405.511 provides that the lowest charge level for these items must be updated semiannually—on July 1, based on charge data derived from claims processed during the preceding January through March period; and on January 1, based on charge data derived from claims processed during the preceding July through September period.

The updating of the lowest charge levels for hospital beds and wheelchairs on July 1 and January 1 is inconsistent with changes to the update periods for reasonable charges for physicians' and other medical services that were made to section 1842(b) of the Act by section 2306(b) of Pub. L. 98–369. Section 1842(b) of the Act now requires that the updating of the customary and prevailing charge levels occur on October 1 instead of July 1 of each year, beginning on October 1, 1985.

In order to make the update changes for items subject to the lowest charge levels consistent with the update change (October 1) for physicians' and other medical services, we are proposing that scheduled updates for lowest charge levels be on an annual basis (that is, October 1), beginning on October 1, 1986. The annual update would be based on charge data incurred or submitted on claims processed by carriers during the 12-month period of April 1st through March 31st preceding October 1st of each year.

We believe that items subject to the lowest charge levels are no more volatile or subject to wide swings in charges than physicians' and other medical services that are updated on an annual basis. Therefore, for the purpose of administrative simplicity, we are proposing to update the lowest charge levels on an annual basis in the same manner as physicians' and other medical services. We believe that this approach would help avoid both the possibility of carrier errors and confusion on the part of suppliers.

IV. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis on any proposed major rule. A major rule is defined as any regulation that is likely to: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate that implementation of this rule would result in Medicare savings of approximately $750 million during the next five years, distributed as follows:

[In millions of dollars]

Fiscal year	Savings
1986	$50
1987	100
1988	150

[In millions of dollars]

Fiscal year	Savings
1989	200
1990	250
Total	750

As required by Executive Order 12291, this proposed rule is considered a major rule because the $100 million threshold is exceeded. Therefore, we are providing an initial regulatory impact analysis.

Medicare spending for DME, prosthetic devices, ambulance transportation, and other non-physician medical services during FY 1984 equaled approximately $1.15 billion and represented an estimated 5.6 percent of total Part B spending. We believe that the bulk of spending (approximately two-thirds) that would be limited under this rule is for DME. We further estimate that without restraints expenditures will rise to approximately $1.5 billion in FY 1986 for these items and services, representing an annual increase of about 15 percent. Part of this increase in total payments is due to increased demand, while a portion simply reflects increased charges for the same items.

Estimated program savings for FY 1986 are equal to the expected increase in reasonable charges from FY 1985 to FY 1986. Estimated savings during FY 1987 through FY 1990 ($700 million) are a combination of: (1) savings from the effects of the FY 1986 limit on reasonable charges carried forward through FY 1990, and (2) the difference between the changes in the CPI throughout the period and the estimated changes that would occur in the reasonable charge levels without restraints. Historically, reasonable charges have increased at a higher rate than the general CPI as described in the table below.

YEAR-TO-YEAR PERCENTAGE INCREASES

Calendar year	Medical services other than certain nonphysician services [1]	Certain nonphysician services [1] [2]	Percentage of total [3]	CPI—Urban [4]	CPI—All medical [5]	CPI certain medical [6]
1979	15.4	17.2	6.8	11.3	9.3	6.7
1980	18.7	27.6	7.3	13.5	10.9	9.4
1981	15.3	27.1	8.0	10.4	10.8	10.5
1982	16.8	26.0	8.7	6.1	11.6	9.1
1983	16.4	22.5	9.1	3.2	8.7	6.4

[1] Percentage increases per enrollee for incurred Medicare Part B reasonable charges.
[2] Purchased and rented DME, ambulance services, prosthetic devices and appliances, and supplies.
[3] Percentage of certain nonphysician services to all Medicare Part B services.
[4] CPI for all urban consumers.
[5] CPI for medical care.
[6] CPI for nonprescription medical equipment and supplies.

The percentage increases in the table above show that the percentage increases in Medicare Part B reasonable charges per enrollee have far exceeded the increases in the CPI for medical care for the period of 1979 through 1983. In particular, the nonphysician services that is, those services for which we are proposing limitations, appear to be increasing in a relatively unconstrained manner. From 1979 to 1983, these services, as a percentage of total Medicare Part B services, have increased from 6.8 percent to 9.1 percent. We believe that this increase results, to some extent, from a lack of control or limitations on charges for Medicare Part B nonphysician services, supplies, and equipment.

The year-to-year percentage increase may be affected by increased utilization. We have taken the effects of increased enrollment into account by analyzing per capita expenditures. Nonetheless, we believe that a substantial portion of the increase is due to excessive charges. The increase for the virtually unconstrained nonphysician services exceeds the increase for Medicare services to which fiscal constraints are applied. In addition, the CPI for medical services was lower than the CPI for all urban consumers for 1979 and 1980, whereas the percentage of certain nonphysician services has continued to increase dramatically throughout the 1979 to 1983 period.

We reviewed a sample of the prevailing charge data available to us for certain nonphysician services from 1980 through 1984. These data are not collected and reported systematically for all nonphysician services, and we cannot determine whether our available data is representative for all such services. Nonetheless, our analysis showed that, although the all-urban CPI increase for that period was 26.1 percent, the majority of the prevailing charges for nonphysician services that were reviewed exceeded the CPI rate of increase.

Savings would accrue to beneficiaries obtaining items and services from suppliers accepting assignment because increases in coinsurance amounts (20 percent of reasonable charges) would be restrained as a result of the new factor for determining reasonable charges.

On the other hand, suppliers not accepting assignment may charge beneficiaries the difference between their actual charge and our reasonable charge, in addition to the 20 percent coinsurance amount. Many suppliers accept assignment only for some of the items and services they furnish and make their assignment decisions on a case-by-case basis. Further, those suppliers that routinely accept assignment for all Medicare covered items and services are not compelled to continue to do so. To the extent that suppliers increase their charges and change their assignment behavior in response to this change, beneficiaries' liability would be affected in a corresponding manner.

We estimate that implementation of the revised payment methodology would cost approximately $3.4 million of initial file conversions, claims processing changes, and the first run of base year charges. Once the system is implemented, the annual cost of updating the charge screens would equal approximately $200,000.

The proposed provision to perform lowest-charge-level updates annually at the same time as other updates is not likely to result in significantly different payment amounts. We would expect some savings in Medicare program administrative costs. However, as a percentage of total administrative expenses, and as compared to the overall impact of this rule, it would be negligible.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities.

For purposes of the RFA, all suppliers of Part B items and services are considered small entities. Since all nonphysician suppliers that currently bill under Part B would be affected by this rule, it is clear that a substantial number of small entities could be affected. In accordance with Departmental guidelines for implementing the RFA, if the annual impact of a rule on small entities is three to five percent or more, then it should be considered significant.

While we have some data regarding overall payments to nonphysician suppliers, we are unable to project the impact on particular types of items or services that would be affected. To illustrate this point, some items are purchased from large supply companies that also produce a wide range of products unaffected by this rule. In these instances, the impact of restraining payment increases under Medicare Part B may be minimal. In other instances, the items affected may represent the products of an entire business enterprise, in which case the impact may be more significant.

Recognizing that this proposal would affect some suppliers more than others, we believe that a significant number may be impacted by more than the three to five percent threshold. Therefore, we conclude that this proposal would have a significant economic impact on a substantial number of small entities.

C. Alternatives Considered

We considered taking no action regarding unwarranted increases in charges for nonphysician Part B services. However, to do so would result in unreasonably high payments by the Medicare program, and, in the form of additional coinsurance liability, by Medicare beneficiaries. It could also be perceived as unfairly discriminatory against other providers and suppliers who are subjected to payment limits of various kinds. Additionally, we hope to create long-term incentives to restrain the rapidly rising charges for Part B items and services. To take no action would result in disincentives and undercut that goal.

An alternative method of restraint on increases, which would establish specific price index values for each type of Part B item, was considered but rejected.

D. Conclusion

A benefit that would result from this proposal is increased control over the rate of increase of Part B expenditures. By limiting reasonable charges to a zero percent increase for one year and limiting increases in reasonable charges in the future, we would pay some suppliers substantially less than they would expect to receive in Medicare revenues in the absence of this proposal. Although we are not proposing to reduce payment for any particular item or service, the program savings we would achieve would be experienced as more limited increases in revenues by the suppliers. Suppliers would be motivated to limit charge increases in the future to no more than the rate of increase in the CPI. They also could have some increased incentive to refuse to accept assignment, which could result in increased costs to some beneficiaries. Nonetheless, we believe that the benefits are sufficient to outweigh the potential adverse effects.

In conclusion, we believe that this is a moderate restraint on suppliers and consistent with similar restraints on all other program participants.

E. Paperwork Reduction Act

These proposed changes would not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

V. Other Required Information

A. Public Comment

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, if we decide to proceed with a final rule, we will consider all comments that we receive by the date specified in the "Date" section of this preamble, and we will respond to the comments in the preamble of that rule.

B. List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

We are proposing to amend 42 CFR Part 405, Subpart E as set forth below:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E continues to read as follows:

Authority: Secs. 1102, 1614(b), 1832, 1833(a), 1842(b) and (h), 1861(b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u(b) and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. The Table of Contents of Subpart E is amended by adding the title of a new § 405.509 to read as follows:

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

Sec.

* * * * *

§ 405.509 Determining inflation-indexed charges.

* * * * *

3. Section 405.502 is amended by adding a new paragraph (a)(4) (previously reserved) to read as follows (the introductory language of paragraph (a) is being reprinted without change for the convenience of the reader):

§ 405.502 Criteria for determining reasonable charges.

(a) *Criteria.* The law allows for flexibility in the determination of reasonable charges to accommodate reimbursement to the various ways in which health services are furnished and charged for. The criteria for determining what charges are reasonable include:

* * * * *

(4) In the case of medical services, supplies, and equipment that are reimbursed on a reasonable charge basis (excluding physicians' services), the inflation-indexed charges as determined under § 405.509.

* * * * *

4. A new § 405.509 is added to read as follows:

§ 405.509 Determining inflation-indexed charges.

(a) *Definition.* For purposes of this section, "inflation-indexed charge" means the reasonable charge for services, supplies and equipment, reimbursed on a reasonable charge basis (excluding physician's services), that is in effect on September 30 of the previous fee screen year plus any increase resulting from the application of an inflation adjustment factor, as described in paragraph (b) of this section.

(b) *Application of inflation adjustment factor to determine inflation-indexed charge.* (1) For fee screen years beginning on or after October 1, 1986, the inflation-indexed charge is determined by adjusting the reasonable charges in effect on September 30 of the previous fee screen year by the annual change in the level of the consumer price index for all urban consumers, as compiled by the Bureau of Labor Statistics, for the 12-month period ending on March 31 of each year.

(2) For the fee screen year beginning October 1, 1985, the inflation adjustment factor is zero.

5. Section 405.511 is amended by redesignating and revising the

introductory language in paragraph (a) as paragraph (a)(1); revising and redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(1)(i) through (a)(1)(iv); adding a new paragraph (a)(1)(v); designating the flush paragraph that follows the current paragraph (a)(4) as paragraph (a)(2); and revising paragraph (c), to read as follows:

§ 405.511 Reasonable charges for medical services, supplies, and equipment.

(a) *General rule.* (1) A charge for any medical service, supply, or equipment (including equipment servicing) that in the judgment of the Secretary generally does not vary signficantly in quality from one supplier to another (and that is identified by a notice published in the **Federal Register**) may not be considered reasonable if it exceeds:

(i) The customary charge of the supplier (see § 405.503);

(ii) The prevailing charge in the locality (see § 405.504);

(iii) The charge applicable for a comparable service and under comparable circumstances to the policyholders or subscribers of the carrier (see § 405.508);

(iv) The lowest charge level at which the item or service is widely and consistently available in the locality (see paragraph (c) of this section); or

(v) The inflation-indexed charges, as determined under § 405.509, in the case of medical services, supplies, and equipment that are reimbursed on a reasonable charge basis (excluding physicians' services).

(2) In the case of laboratory services, paragraph (a)(1) of this section is applicable to services furnished by physicians in their offices, by independent laboratories (see § 405.1310(a)) and to services furnished by a hospital laboratory for individuals who are neither inpatients nor outpatients of a hospital. Allowance of additional charges exceeding the lowest charge level can be approved by the carrier on the basis of unusual circumstances or medical complications in accordance with § 405.506.

* * * * *

(c) *Calculating the lowest charge level.* The lowest charge level at which an item or service is widely and consistently available in a locality is calculated by the carrier in accordance with instructions from HCFA as follows:

(1) *For items or services furnished on or before September 30, 1986.*

(i) A lowest charge level is calculated for each identified item or service in January and July of each year.

(ii) The lowest charge level for each identified item or service is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for that item or service, in the locality designated by the carrier for this purpose, during the second calendar quarter preceding the determination date. Accordingly, the January calculations will be based on charges for the July through September quarter of the previous calendar year, and the July calculations will be based on charges for the January through March quarter of the same calendar year.

(2) *For items or services furnished on or after October 1, 1986.*

(i) A lowest charge level is calculated for each identified item or service in October of each year.

(ii) The lowest charge level for each identified item or service is set at the 25th percentile of the charges (incurred or submitted on claims processed by the carrier) for that item or service, in the locality designated by the carrier for this purpose, during the 12-month period of April 1 through March 31 preceding the fee screen year (October 1 through September 30) for which the item or service was furnished.

(3) *Lowest charge levels for laboratory services.* In setting lowest charge levels for laboratory services, the carrier will only consider charges made for laboratory services performed by physicians in their offices, by independent laboratories which meet coverage requirements, and for services furnished by a hospital laboratory for individuals who are neither inpatients on outpatients of a hospital.

* * * * *

(Catalog of Federal Domestic Assistance Programs: No. 13.773, Medicare—Hospital Insurance Program)

Dated: May 28, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: July 29, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-19764 Filed 8-15-85; 8:45 am]

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