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Briefings on How To Use the Federal Register—
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WHAT IT IS AND HOW TO USE IT

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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.

CHICAGO, IL

WHEN: July 8, at 9 a.m.
WHERE: Room 204A,
Everett McKinley Dirksen Federal Building,
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WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building,
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Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8129

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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

Office of the Secretary

7 CFR Part 4

Claims Against Indemnity Fund Under Programs Administered by Agricultural Stabilization and Conservation County Committees

AGENCY: U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: Part 4 of this title was issued to prescribe procedures for making claims for indemnification for losses resulting from certain actions of Agricultural Stabilization and Conservation (ASC) county committees. Valid claims were paid from a general Indemnity Fund (the Fund) maintained in the U.S. Treasury. The Fund is currently depleted and there is no authority to replenish the Fund. Therefore 7 CFR Part 4 is removed.

EFFECTIVE DATE: June 9, 1987.

FOR FURTHER INFORMATION CONTACT: Bill Waggener, claims specialist, Claims Administration and Contract Procedures Branch, U.S. Department of Agriculture—ASCS, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–4298.

SUPPLEMENTARY INFORMATION: The Fund was established in 1938 in the U.S. Treasury to indemnify the producers for losses sustained from the destruction of crops as a result of their reliance on an erroneous notice of acreage furnished by ASC committeemen or employees of ASC committees in connection with the operation of programs administered through ASC committees. In the future, claims for such losses may be filed under the Federal Tort Claims Act (28 U.S.C. 2671 through 2680) in accordance with procedures available in ASCS county offices.

Accordingly, Part 4 of Title 7 of the Code of Federal Regulations is amended as follows:

PART 4—[REMOVED AND RESERVED]

Part 4 is removed and reserved.

(7 U.S.C. 1375)

Signed at Washington, DC, on June 3, 1987.

Milton J. Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87–13098 Filed 6–8–87; 8:45 am]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 70, 72, 73, and 74

Changes to Safeguards Reporting Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations for the reporting of safeguards events. These amendments clarify the reporting requirements for NRC licensees and will improve the NRC safeguards event data based by requiring more uniform safeguards event reports. Licensees who are affected include power and non-power reactors, fuel cycle facilities, and transporters, importers, and exporters of special nuclear material. The NRC uses the reported information to assure safety during safeguards-related emergencies and to identify and characterize generic and facility specific precursors that can be utilized to preempt duplicative or similar events in the future. The benefits derived from this action are the elimination of unnecessary reports without degradation to safeguards, the extension of the period for written report submittals and an improved data analysis system to provide industry feedback for improving safeguards systems.

EFFECTIVE DATE: October 8, 1987.

FOR FURTHER INFORMATION CONTACT: Loren Bush, Office of Nuclear Reactor Regulation, or Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–8080, or (301) 427–4773, respectively.

SUPPLEMENTARY INFORMATION:

Background

10 CFR 73.71 establishes an event reporting program to inform the Commission of safeguards events to permit timely and appropriate response to incidents. Safeguards events include actual or attempted theft of special nuclear material (SNM); actual or attempted acts or events which interrupt normal operations at power reactors due to unauthorized use of or tampering with machinery, components, or controls; certain threats made against facilities possessing SNM; and safeguards system failures impacting the effectiveness of the system. The data from this reporting program further allows the Commission to identify and characterize generic and facility specific precursors to safeguards events. Since the issuance of 10 CFR 73.71 (47 FR 11511), the NRC staff has found that the requirements are frequently misinterpreted, that written follow-up reports submitted pursuant to the regulation lack uniformity, and that within these reports insufficient data is reported for NRC analysis.

For these reasons, on August 27, 1985, the NRC published proposed amendments in the **Federal Register** (50 FR 34708) to clarify and simplify the requirements of 10 CFR 73.71; conforming amendments to 10 CFR 70.52, 72.52, 73.67, and 74.71 were also proposed at that time. The comment period which was to have ended on November 27, 1985 was extended to December 31, 1985 to permit sufficient time for review of companion guidance issued after the proposed rule publication.

Summary of Public Comment

Comments were received from twenty-six respondents comprised of power reactor licensees, one fuel processing licensee, three industry groups and one private citizen. Copies of comment letters are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street NW., Washington, DC.

The proposed amendments have been modified in response to comments received, as appropriate, and are being published in final form, to become effective 120 days after publication of the notice. A summary of the public

comments, along with their resolution, follows. The comments have been placed in the following categories:

1. Safeguards log.
2. Reporting of interruption of normal operations at power reactors.
3. Reporting of unauthorized entry through required barrier.
4. Administrative issues.
5. Clarifications needed.
6. Miscellaneous issues.

1. *Safeguards log.* The majority of respondents commented on some aspect of the safeguards log. These comments have been divided into the following issues that the respondents raised:

a. Items to be logged.

b. Maintenance and submittal of stand-alone log.

c. Additional discussion of burden imposed by log.

(a) *Items to be logged.* Respondents indicated that the provision to log any other failure of a safeguards system "* * * not included in paragraph II(a) * * * if the failure degrades the effectiveness of the system * * *" would require the logging of a great deal of insignificant data. Respondents suggested that unless the provision was made clearer, substantial disagreement could exist between licensees and NRC inspectors over what items are required to be logged. The provision may be subject to broad interpretation because of its open-ended nature. For this reason this provision has been revised to read: "Any other threatened, attempted, or committed act not previously defined in Appendix G with the potential for reducing the effectiveness of the safeguards system below that committed to in a licensed physical security or contingency plan or the actual condition of such reduction in effectiveness." The supporting guidance for the rule has been revised accordingly in response to these revisions.

(b) *Maintenance and submittal of stand-alone log.* The majority of commenters including two utility groups indicated that the maintenance and submittal of a stand-alone log was a large administrative burden on the licensee implemented for the convenience of the NRC. The recommendation was made that this requirement be deleted in its entirety. Justification for this recommendation included the opinion that the events to be logged are insignificant and their logging will not increase safeguards effectiveness, submittal of the log will require increased review of the log by licensee management to assure that events required to be logged are in fact logged, and records of the events to be logged are presently maintained onsite and readily available for NRC inspection.

In response to these comments, it is believed this provision has been subject to much misinterpretation. The proposed reporting and recordkeeping requirements are intended to keep NRC informed concerning the degradation/failure or attempted/actual penetration of each licensee's physical security system as well as credible threats made against the licensee's facility. NRC staff intends to use the reported/recorded safeguards information to assure that appropriate action is taken by the licensee to address physical security degradation/failure and/or threats against the facility. Further, such information is used to identify and characterize generic and facility specific precursor information that could be utilized to preempt duplicative or similar events in the future. These considerations support the need for the reporting of these types of events. Regarding the maintenance of a stand-alone log, it is noted that this is not a new requirement and that under the previous 10 CFR 73.71(c), licensees were required to maintain a separate log to record events reportable under § 73.71. Furthermore, examples of the types of events other than those required by 10 CFR 73.71(c) that need be "recorded" under the previous regulation are identified in Regulatory Guide 5.62, Reporting of Safeguards Events. (Copies of this Regulatory Guide are available for inspection or copying for a fee at 1717 H Street, NW., Washington, DC.) Comparison of this information with the events to be logged under the proposed regulation indicates an overall reduction in the burden to licensees resulting from events to be reported. This is based on the fact that the majority of events previously required to be reported within 24 hours (with a follow-up written report) have been picked up as log entries under the revised regulation. As a log entry, the follow-up written report need not be submitted, substantially reducing the overall burden. Some commenters interpreted the increased number of examples in the supporting guidance for the proposed rule as meaning more events were required to be reported. The staff notes at this time that the examples in the original regulatory guide were never intended to be all-inclusive and that the additional examples have been provided to aid the licensee in understanding the intent of the regulation. Commenters also indicated that not all events required to be logged under the present requirement are logged in one log, but a number of logs, i.e., maintenance log, alarm station log, etc. It is the opinion of these commenters that revising their procedures to maintain one log, as opposed to multiple logs, will greatly increase their burden. It is anticipated that the revised regulation will reduce the burden to licensees. Accordingly, no revision has been made to the revised rule in the area of maintenance of a stand-alone log.

Regarding the submittal of the stand-alone log to the NRC requiring additional review time by licensee management, commenters are reminded that the requirement to maintain a log, regardless of its submittal to the NRC, carries with it the requirement for correct and accurate entries. The concern over review for accuracy associated with the act of submitting the log to the NRC should also be applied to the maintenance of a log onsite for review by inspectors. Hence, with respect to review time, there is no difference, from a regulatory standpoint, in the level of burden imposed between a log maintained onsite versus one submitted to the NRC. It is noted that the log submitted to the NRC does not have to be typewritten as long as it is legible. The supporting guidance for the rule has been revised to reflect this and to include examples of sample log entries for clarification regarding length and content.

Finally, regarding the comment that the log need not be submitted to NRC Headquarters because records are available for onsite inspection, the staff believes that with the justification of a stand-alone log established, the onerous nature of the log submittal to the NRC, as noted in comments, is greatly lessened. In review, this is based upon no requirement to submit a *typed* or original log (xeroxed is acceptable as long as it is legible) and no additional requirement imposed on the accuracy of a log submitted to the NRC versus one maintained onsite.

(c) *Additional discussion of burden imposed by log.* As previously discussed, the overall burden on licensees for the reporting/logging of safeguards events is in fact reduced by the proposed requirement. However, based upon the number of comments received on this issue, the Regulatory Analysis for this rulemaking has been thoroughly reviewed and revised, as appropriate, to assure that respondents' concerns have been considered.

2. *Reporting of interruption of normal operations at power reactors.* The proposed regulation under § 73.71(b) and I(a)(3) of Appendix G to Part 73 requires that actual or attempted acts or events which cause or could cause interruption of normal operation of a licensed

nuclear power reactor through the unauthorized use of its machinery, components, or controls be reported within one hour to the NRC. Various comments were received from respondents on this issue. The majority of comments indicated that some clarification of the provision is needed. Specific suggestions included limiting the provision to deliberate, intentional, or malicious acts and focusing the provision on an actual act of sabotage rather than interruption of normal operation. A few comments indicated that the interruption of normal operation should not be considered a safeguards event and that such events are already reportable under Part 50 requirements. Finally, specific definitions for the terms "tampering" and "interruption of normal operation" were requested.

The inclusion of this provision within the reporting requirements for safeguards events was prompted by amendments in 1981 to the Atomic Energy Act of 1954, as amended, (the Act). At that time a new subsection (section 236b) was added which subjects to criminal penalty any person who intentionally or willfully causes or attempts to cause an interruption of the normal operation of specified nuclear facilities through the unauthorized use of or tampering with the machinery, components, or controls for such facilities. The Federal Bureau of Investigation (FBI), as the Federal agency charged with the criminal investigation of sabotage at nuclear reactors, has revised its internal policy on the definition of sabotage to be consistent with the Act. The revision to 10 CFR 73.71 is necessary to bring NRC regulations into line with the Act. Because the question of intent cannot normally be determined in a one hour time frame, the term "willfully" and "intentionally" are not included in the reporting requirements.

A proper application of the term "interruption of normal operations" will put the reporting of these events in proper perspective. The legislative history for the aforementioned amendments to the Act states that the term refers to the cessation of actual production, utilization, or storage operations which, if accomplished, would result in substantial economic harm or cost to the licensee. For the purpose of this rulemaking, this term will be used only to refer to utilization operations. The term sabotage is not specifically used within the regulation to assure that the actual act is reported while allowing the FBI to investigate whether a violation of law has occurred. In addition, the word "tampering", when used in conjunction with this reporting requirement only, means altering for improper purposes or in an improper manner. It is noted that all terms or phrases clarified as a result of comment analysis for the proposed rule are included in a glossary added to the supporting guidance for this rule, Regulatory Guide 5.62, "Reporting of Safeguards Events," Rev. 1. Finally regarding duplication of reporting with Part 50 requirements, the revisions to 10 CFR 73.71 explicitly state that duplicate reports are not required for events that are also reportable under 10 CFR 50.72 and 50.73.

3. *Reporting of unauthorized entry through a required barrier.* Sections 73.71(b)(1) and I(c) of Appendix G to Part 73 of the proposed regulation required any unauthorized entry through a required barrier (whether or not the event is properly compensated) to be reported to the NRC within one hour of discovery. Comments on this issue questioned the need for reporting of all unauthorized entries especially those by authorized individuals and indicated that unauthorized entries due to procedural or unintentional errors need not be reported especially when the event is properly compensated. Specific definitions for the terms "unauthorized entry" and "required barriers" were requested.

The staff agrees in part with these comments and recognizes the fact that some unauthorized entries through a required barrier may not involve malevolent intent particularly those involving "tailgating" by individuals into areas to which they are authorized unescorted access. Conversely, however, the staff believes it prudent and appropriate that malevolent intent be assumed if an individual makes an actual entry into an area to which he or she is not authorized unescorted access. For these reasons, this provision has been revised to require one-hour reporting of: "Any actual entry of an unauthorized person into a protected area, a material access area, controlled access area, vital area, or transport." An unauthorized person is defined as an unescorted individual in an area to which the individual is not granted unescorted access. All other acts or events involving invalid or incorrect entry procedures should be logged. To clarify this issue, additional pertinent examples have been added to the rule's supporting guidance. In addition, the intent of proposing to require the reporting of any unauthorized entry through a required barrier was also to require the reporting of the introduction or attempted introduction of contraband into the facility. While § I(a) of Appendix G could also be cited as requiring the reporting of such an event, the staff has added a separate provision to make it clear such events are required to be reported within one hour.

4. *Administrative issues.* The proposed regulation required the use of the Licensee Event Report (LER) form, NRC Form 366, for the submittal of follow-up written reports by power reactor licensees. Public comment, including the comment of one utility group, identified problems with the use of these forms and recommended the use of letter format for report submittal as required for all but power reactor licensees. Commenters opposed the use of the form by noting that the form was prepared for the reporting of safety events under Part 50 requirements and, hence, did not quite "fit" the planned usage under 10 CFR 73.71. From a philosophical standpoint, commenters felt the use of a common form blurred the important distinction between safety and safeguards. The purpose in requiring the use of this common form was to simplify report submittal. It is believed that the form has been designed with enough flexibility to accommodate the reporting of both safety and safeguards events. Furthermore, use of a common form will simplify administrative procedures. For these reasons, no change has been made to the regulation regarding use of the LER form. However, guidance on use of the form by power reactor licensees for the reporting of safeguards events has been added to the rule's supporting guidance.

A few comments were received which requested the one-hour reporting requirement be extended to 4 or 24 hours and the requirement to log an event within 24 hours of its discovery be extended to 72 hours. No revision to the proposed rule has been made in response to these comments. In the case of extending the one-hour limit, the proposed rule represents appropriate revisions to the present requirement that assure only those events requiring a one-hour report are in fact required to be reported within one hour. In the case of extending the 24-hour limit, a 24-hour period to document an event in a log is more than sufficient time and already represents a relaxation over immediate logging.

Also in the area of reporting periods, commenters, including one utility group, commented that the initiation of the time period for reporting should be tied to discovery by a member of the security organization, not just by any licensee employee, and that the security

organization should make the determination that a safeguards event has occurred, again, not just any employee. The staff agrees that the determination for reporting an event should be made by onsite security management or equivalent. This information has been added to the rule's supporting guidance. It is believed, however, that the discovery of an event should not be limited to discovery by a member of the security organization. All regular site employees should receive training by the security organization to foster an awareness of site security. In this regard, site employees should be briefed on their responsibility to immediately notify site security of safeguards anomalies. The staff, therefore, has made no revision to the proposed regulation in response to this particular comment.

Commenters, including one utility group, requested that the required record retention period of three years be revised downward to one year. In this regard, there is an ongoing NRC rulemaking which will standardize all record retention periods to 3 years, 5 years, 10 years, or life in order to ease the burden on affected licensees who are subject to diverse reporting and recordkeeping requirements. The three-year period required in 10 CFR 73.71 is consistent with this policy. As this policy evolves, any revisions to the standardized retention periods would be reflected in a conforming amendment to § 73.71.

Respondents further expressed the view that immediate reports should be made to the appropriate NRC Regional Office, not the Operations Center and that the procedure for revising written reports, i.e., complete report resubmittal, was overburdensome and unnecessary. Justification for changing the designated report recipient to the Region included the fact that immediate response is provided by the Region, not NRC Headquarters, and that current practice is to notify a Regional Office during day-time work duty hours and to notify the Operations Center during night off-duty hours.

The NRC purpose in requiring reports to be made to the Operations Center, as required under present § 73.71 requirements, is to assure safety through appropriate action taken in response to emergencies or other acts or events inimical to the public health and safety. Through pre-established procedures, this centralized point can notify designated personnel for action as appropriate. It is also believed that simplified procedures, such as use of one centralized point for the reporting of significant events (both safety and safeguards), will assist licensees in responding to continuing developments if an actual emergency progresses for some time. Accordingly, this provision remains as required under the present regulation. Regarding the submittal of a revised report, requiring full report resubmittal assists in standardizing the procedures for the reporting of safety and safeguards events. For safety-related events, these procedures are described in NUREG–1022, Supplement No. 1, "Licensee Event Report System" which states:

> The revised LER must stand alone. In addition, it would be very helpful if the licensee would indicate in the text on the LER form the revised or supplementary information. The revised or supplementary information could be noted in a manner analogous to amendments for FSARs by placing a vertical line in the margin.

For this reason, no changes have been made in response to this comment.

Finally, the staff has re-evaluated the need to provide a copy of the safeguards log to ". . . if applicable, the appropriate NRC Resident Inspector . . ." and has determined this is an unnecessary burden to licensees and inconsistent with the goal of consistency with safety-event reporting procedures. Accordingly, this requirement has been deleted.

5. *Clarifications needed.* Public comment requested clarification of a number of terms and expressions used in the guidance for the proposed regulation. Some of these have been clarified under the discussion of other comment issues. The remaining terms are clarified here. All terms or expressions discussed as part of public comment analysis for this rule are included in a glossary added to the rule's supporting guidance, Regulatory Guide 5.62, Reporting of Safeguards Events, Rev. 1.

a. "Safeguards system." This term covers the equipment, personnel, and procedures that comprise the physical protection program necessary to meet Part 73 requirements.

b. "Any failure of a safeguards system or the discovered non-inherent vulnerability * * * etc." In an attempt to clarify this phrase it has been revised to refert to: "Any failure, degradation, or discovered vulnerability * * *" and to delete the proposed definition of compensatory measures. Rather than add an additional definition for compensatory measures to the Federal Code (which could be confusing), the existing definition found under 10 CFR 73.46(g)(5) and 73.55(g)(1) will be used. This definition will be referenced in the supporting guidance for this rulemaking. For further clarification, descriptions of acceptable compensatory measures have been added to the supporting guidance.

c. "Credible" threat. A threat should be considered credible when (1) physical evidence supporting the threat exists, (2) information independent from the actual threat message exists which supports the threat, or (3) a specific group or organization claims responsibility for the threat.

d. "Significant physical damage" (as applied to a power reactor, a facility possessing SSNM or its equipment, carrier equipment transporting nuclear fuel or spent nuclear fuel, or to the nuclear fuel or spent nuclear fuel a facility or carrier possesses). This term covers physical damage to the extent that the facility, equipment, transport, or fuel cannot perform its normal function.

e. "Lost" versus "unaccounted for" re: transportation of material. The term "lost" covers material that is no longer in the possession of the party authorized to possess it during a specific time period and a search for the material verifies this. "Unaccounted for" refers to material in transit which has not arrived at its delivery point four hours or more after the estimated arrival time. However, a search has not confirmed the material to be lost.

f. "Theft of SNM." The term refers to the unauthorized taking of SNM for unauthorized use.

g. "Diversion of SNM." This term refers to the unauthorized movement of SNM by individuals authorized access to or control over the material.

h. "Loss of SNM." This term refers to (1) a failure to meausre or account for material, authorized to be possessed by the licensee, by the material control and accounting system approved for the facility and not confirmed stolen or diverted or (2) an accidental (i.e. unplanned) offsite release or dispersal of SNM known or suspected to be 10 times greater than normal operating losses for the time frame in question whether or not the release is measured. The term "loss" implies that a search has been conducted to confirm the material loss. For fixed sites, this search should be conducted within the one-hour time frame of reportability.

i. "Safeguards Event Log." This term refers to a compilation of log entries for the events described under section II of Appendix G to 10 CFR Part 73. Entries must include date and time of event, summary description of event, and action taken. For repeated events, the date and time should be recorded; however, the summary and action taken

need only reference the initial event of the series of identical events. An active "safeguards event log" is not required to be maintained in one location onsite. Its format may be typed or handwritten as long as it is legible and reproducible. Entries in a "safeguards event log" submitted to the NRC need not be in time sequential order.

6. *Miscellaneous issues.* This rulemaking grants a portion of a petition for rulemaking assigned Docket No. PRM 50–36 from the Nuclear Utility Backfitting and Reform Group (NUBARG). This rule responds specifically to section VI of the petition, Reporting Requirements Associated with 10 CFR 73.71. In this section the petitioner suggests that the regulation be amended to provide for written report submittal by the licensee within 30 days of initial notification rather than within 15 days. According to the petitioner, this would allow a licensee's staff more time during the critical period immediately following an event to devote to the resolution of the problem and would minimize interference with daily operation. The NRC has agreed with this suggestion in the past and included this revision within the final rule. Comments received on this issue universally support the extension of the time period for written report submittal. NUBARG acknowledged the action and requested a prompt response from the NRC on the remaining items of the petition.

Comments received from one low enriched uranium fuel fabrication licensee noted that its NRC-approved physical security plan specifically identifies the reporting requirements for shipments that have not reached their destination by the estimated time of arrival. This commenter requested that the requirements for licensees subject to § 73.67 not be changed because these changes would produce no benefit but would result in added costs. The staff has made a thorough review of this issue, including inspection of reporting commitments in the subject licensee's physical security plan and finds no conflict. A "lost" shipment carries with it the understanding that a search or trace investigation has determined the shipment to be verified lost (see paragraph 5e above). A shipment may be "unaccounted for" for up to 4 hours before it is determined "lost." There is no difference in a reporting period described as "within one hour of discovery of a loss" versus "within one hour of obtaining results of a trace investigation."

Finally, during the course of public comment analysis, a question arose whether licensees would be required to submit physical security plan amendments to conform with this revised regulation. The revised regulation supersedes the previous § 73.71 and any previous security plan commitments dealing with reporting of safeguards events. Licensees are not required to submit plan changes in response to the new regulation; however, those licensees who have paraphrased the previous 10 CFR 73.71 in their security plans should revise their plans to delete previous commitments in this area; these plan revisions may be submitted under the provisions of 10 CFR 50.54(p). It is noted that based upon the expected reduction in burden to affected NRC licensees with no resultant safeguards degradation, this regulation has been approved as a generic backfit and a backfit analysis is incorporated within this notice.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–009, 3150–0132, 3150–0002, and 3150–0123.

Regulatory Analysis

The NRC staff has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555. Single copies of the analysis may be obtained from Priscilla A. Dwyer, Safeguards Reactor Regulatory Requirements Section, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427–4773.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this revised rule does not have a significant economic impact on a substantial number of small entities and will result in a reduction in burden to affected licensees. Some transporters, importers, and exporters of special nuclear material (SNM) and spent fuel will be affected by this rule. Each year out of approximately 600 reported events, about 3 come from this group which includes small entities. The rule also affects licensees who operate nuclear power plants and fuel facilities under 10 CFR Parts 50 and 73. The companies that own these plants and facilities do not fall within the scope of the definition of "small entities" set forth in § 605(b) of the Regulatory Flexibility Act of 1980, or within the definition of Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121.

Backfit Analysis

As required by 10 CFR 50.109 (50 FR 38097), the NRC staff has completed a backfit analysis for this final rule. The staff has determined, based on this analysis, that backfitting to comply with the requirements of this final rule is justified because imposition of these requirements will result in a substantial increase in the overall protection of the public health and safety or the common defense and security and direct and indirect costs are justified in view of the increase in protection. The backfit analysis, which includes a summary regulatory analysis, follows.

I. Summary Regulatory Analysis

1. *Objective.* In general, the objective of this rule is to clarify and simplify the reporting of safeguard events to the NRC by licensees. Safeguards events include actual or attempted theft of special nuclear material (SNM), actual or attempted acts or events which interrupt normal operations at power reactors due to unauthorized use of or tampering with machinery, components or controls, certain threats made against facilities possessing SNM, and safeguards system failures impacting the effectiveness of the system. The reporting of this data to the NRC is necessary to assure safety during safeguards-related emergencies and to allow the Commission to identify and characterize generic and facility-specific precursors to certain safeguards events. Since the original issuance of § 73.71, the staff has found the requirements are frequently misinterpreted, that written follow-up reports submitted pursuant to the regulation lack uniformity and that within these reports insufficient data is reported for NRC analysis.

Specifically, these revisions will: (1) Clarify to licensees the safeguards

events that must be reported, (2) extend the period of time for submittal of licensee written reports, (3) assure standardized and sufficient report-making to assist NRC data evaluation, (4) eliminate telephonic notification and written reporting deemed unnecessary by the staff, and (5) assure a consistent and comparable level of reporting for safety and safeguards events.

2. *Description of activity.* At present, licensees are required to report certain events within one hour or 24 hours of their occurrence with submittal of written follow-up reports within 5 or 15 days depending upon the event. All events reportable are required to be maintained in a separate log onsite, while other events are simply required to be recorded. The specific events reported within these time periods or logged are described by such broad phrases as "potential loss," "moderate loss of effectiveness" and "major loss of effectiveness."

The revisions to § 73.71 require events to be either reported within one hour or logged with the log submitted to the NRC on a quarterly basis. Events reported within one hour are required to be followed up by a written report within 30 days. In describing the events to be reported, an attempt has been made to describe only those types of events actually requiring reporting and to assure that categorization of events which may warrant Federal involvement is made by appropriate Federal agencies, not the licensee.

The net results of the final regulations are to (1) eliminate the present 24-hour reporting requirement (most items presently reportable within 24 hours will be logged, only, under the final rule), (2) eliminate the requirement to log items reportable to the NRC within one hour, (3) clarify and simplify the descriptions of events to be reported or logged including clarification of information to be reported, and (4) require the submittal of a log of safeguards events to the NRC on a quarterly basis.

Since licensees are currently required to immediately report or log certain safeguards events, the major new activity required of the licensee under this amendment is submittal of the quarterly log to the NRC.

3. *Potential change in risk to the public from accidental offsite release of radioactive material.* An improved system for the reporting of safeguards events, which might or in fact do lead to a radioactive release, e.g., radiological sabotage, could permit more timely and effective response to the incident. This could have the effect of decreasing the risk to public from an offsite release by allowing more timely mitigation of the event or more timely implementation of necessary contingency action.

4. *Potential impact on radiological exposure of facility employees.* To the extent that an improved reporting system will permit more timely mitigation of a safeguards event involving a radioactive release, the potential impact of radiological exposure on facility employees will be reduced. Otherwise, with respect to radiological exposure, there is no impact on facility employees.

5. *Installation and continuing costs.*

Current Annual Licensee Operational Cost	$15k/site.
Revised Annual Licensee Operational Cost	6k/site.
Decreased Cost Resulting from Revised Regulation.	9k/site.

6. *Potential safety impact of changes in plant or operational complexity.* None.

7. *Estimated resource burden on the NRC.*

Current NRC Operational Cost	$126k/all sites.
Revised NRC Operational Cost	266k/all sites.
Increase Cost to NRC Resulting from Revised Regulation (due to increased time needed to analyze quarterly submitted log).	140k/all sites.

8. *Potential impact of differences in facility type or age.* No potential impact is noted of differences in facility type or age on the relevance or practicability of implementing this rule.

9. The rule is final.

II. Justification

1. *Increased protection of the public health and safety.* The staff believes that issuance of this final rule will improve the implementation of reporting of safeguards events requirements due to increased clarity. Further, it will improve the ability of the NRC to uncover generic precursors to events or defects in the safeguards systems used to protect the plant. Clarifying and simplifying procedures for reporting can have a significant impact on the timeliness and effectiveness of establishing the NRC-licensee interface or other possibly necessary Agency interfaces (e.g., with the FBI) during actual safeguards emergencies. This results in increased protection to the public health and safety because it facilitates a timely, coordinated response to safeguards emergencies by the NRC, licensees, and other Agencies, as appropriate. Improving the ability of the NRC staff to uncover generic precursors or defects provides the NRC with an improved capability to initiate corrective action, if needed, prior to a vulnerability having a detrimental effect on the public health and safety. This action will, thus, also improve the protection of the public health and safety.

2. *Cost implications.* Implementation costs are expected to be negligible because neither security plan amendments nor their review will be required. Annual operating costs are anticipated to decrease for industry, from $15k to $6k per site, because of a reduced reporting burden, and increase for the NRC, from $126k to $266k for all sites, because of the increased time needed to review quarterly submitted logs.

3. *Priority and scheduling.* Based upon the resulting substantial increase in the overall protection of the public health and safety, as discussed above, this backfit is considered to be a high priority. The proposed changes do not affect the schedules of other regulatory activities on-going at nuclear power plants.

4. *Findings.* The NRC staff finds that issuance of this final rule will result in a substantial increase in the overall protection of the public health and safety and direct and indirect costs are justified in view of the increase in protection.

List of Subjects

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 73

Hazardous materials—transportation, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 74

Accounting, Material control and accounting, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 70, 72, 73 and 74.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 70.3, 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32 (a)(3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.20a (a), and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51(c)–(g), 70.56, 70.57 (b) and (d), 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)), and §§ 70.5, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 70.52 is revised to read as follows:

§ 70.52 Reports of accidental criticality or loss or theft or attempted theft of special nuclear material.

(a) Each licensee shall notify the NRC Operations Center [1] within one hour after discovery of any case of accidental criticality or any loss, other than normal operating loss, of special nuclear material.

(b) Each licensee who possesses one gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center within one hour after discovery of any loss or theft or unlawful diversion of special nuclear material which the licensee is licensed to possess or any incident in which an attempt has been made or is believed to have been made to commit a theft or unlawful diversion of such material.

(c) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(d) Reports required under § 73.71 need not be duplicated under the requirements of this section.

[1] Commercial telephone number of the NRC Operations Center is (301) 951–0550.

PART 72—LICENSING REQUIREMENTS FOR THE STORAGE OF SPENT FUEL AT AN INDEPENDENT SPENT FUEL STORAGE INSTALLATION

1. The authority citation for Part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2239, 2282); sec. 274, Pub. L. 88–373, 73 Stat. 688, as amended (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332).

Section 72.34 also issued under sec. 189, 68 Stat. 955, (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); 72.6, 72.14, 72.15, 72.17(d), 72.19, 72.33(b)(1), (4), (5), (e), (f), and 72.36(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); 72.10, 72.15, 72.17(d), 72.33(c), (d)(1), (2), (e), 72.81, 72.83, 72.84(a), and 72.91 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and 72.33(c)(3), (d)(3), (f), 72.35(b), 72.50–72.52, 72.53(a), 72.54(a), 72.55, 72.56, 72.80(c), and 72.84(b) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 72.52 is revised to read as follows:

§ 72.52 Reports of accidental criticality or loss of special nuclear material.

(a) Each licensee shall notify the NRC Operations Center [1] within one hour of discovery of accidental criticality or any loss of special nuclear material.

(b) This notification must be made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or any other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(c) Reports required under § 73.71 need not be duplicated under the requirements of this section.

[1] Commercial telephone number of the NRC Operations Center is (301) 951–0550.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for 10 CFR Part 73 is revised to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399 and sec. 161i, 68 Stat. 949 (42 U.S.C. 2201(i)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 73.21, 73.37(g), 73.55 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 73.20 73.24, 73.25, 73.26, 73.27, 73.37, 73.40, 73.45, 73.46, 73.50, 73.55, and 73.67 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§73.20(c)(1), 73.24(b)(1), 73.26(b)(3), (h)(6), and (k)(4), 73.27(a) and (b), 73.37(f), 73.40(b) and (d), 73.46(g)(6) and (h)(2), 73.50(g)(2), (3)(iii)(B) and (h), 73.55(H)(2), and (4)(iii)(B), 73.70, 73.71, 73.72 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 73.67 paragraphs (e)(3)(vii) and (g)(3)(iii) are revised to read as follows:

§ 73.67 Licensee fixed site and in-transit requirements for the physical protection of special nuclear material of moderate and low strategic significance.

* * * * *

(e) * * *

(3) * * *

(vii) Notify the NRC Operations Center [1] within one hour after the discovery of the loss of the shipment and within one hour after recovery of or accounting for such lost shipment in

[1] Commercial telephone number of the NRC Operations Center is (301)951–0550.

accordance with the provisions of § 73.71 of this part.

* * * * *

(g) * * *

(3) * * *

(iii) Conduct immediately a trace investigation of any shipment that is lost or unaccounted for after the estimated arrival time and notify the NRC Operations Center [1] within one hour after the discovery of the loss of the shipment and within one hour after recovery of or accounting for such lost shipment in accordance with the provisions of § 73.71 of this part.

3. Section 73.71 is revised to read as follows:

§ 73.71 Reporting of safeguards events.

(a) (1) Each licensee subject to the provisions of §§ 73.25, 73.26, 73.27(c), 73.37, 73.67(e), 73.67(g) shall notify the NRC Operations Center [1] within one hour after discovery of the loss of any shipment of SNM or spent fuel, and within one hour after recovery of or accounting for such lost shipment.

(2) This notification must be made to the NRC Operations Center via the Emergency Notification System, if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other methods that will ensure that a report is received by the NRC Operations Center within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(3) The licensee shall, upon request to the NRC, maintain an open and continuous communication channel with the NRC Operations Center.

(4) The initial telephonic notification must be followed within a period of 30 days by a written report submitted to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555. The licensee shall also submit one copy to the appropriate NRC Regional Office listed in Appendix A to this part. The report must include sufficient information for NRC analysis and evaluation.

(5) Significant supplemental information which become available after the initial telephonic notification to the NRC Operations Center or after the submission of the written report must be telephonically reported to the NRC Operations Center and also submitted in a revised written report (with the revisions indicated) to the Regional Office and the Document Control Desk. Errors discovered in a written report must be corrected in a revised report with revisions indicated. The revised report must replace the previous report; the update must be a complete entity and not contain only supplementary or revised information. Each licensee shall maintain a copy of the written report of an event submitted under this section as record for a period of three years from the date of the report.

(b)(1) Each licensee subject to the provisions of §§ 73.20, 73.37, 73.50, 73.55, 73.60, or 73.67 shall notify the NRC Operations Center within one hour of discovery of the safeguards events described in paragraph I(a)(1) of Appendix G to this part. Licensees subject to the provisions of §§ 73.20, 73.37, 73.50, 73.55, 73.60 or each licensee possessing strategic special nuclear material (SSNM and subject to § 73.67(d) shall notify the NRC Operations Center within one hour after discovery of the safeguards events described in paragraphs I(a)(2), (a) (3), (b), and (c) of Appendix G to this part. Licensees subject to the provisions of §§ 73.20, 73.37, 73.50, 73.55 or 73.60 shall notify the NRC Operations Center within one hour after discovery of the safeguards events described in paragraph I(d) of Appendix G to this part.

(2) This notification must be made in accordance with the requirements of paragraphs (a) (2), (3), (4), and (5) of this section.

(c) (1) Each license subject to the provisions of §§ 73.20, 73.37, 73.50, 73.55, 73.60, or each licensee possessing SSNM and subject to the § 73.67(d) shall maintain a current log and record the safeguards events described in paragraphs II (a) and (b) of Appendix G to this part within 24 hours of discovery by a licensee employee or member of the licensee's contract security organization. The licensee shall retain the log of events recorded under this section as a record for three years after the last entry is made in each log.

(2) Every three months, each licensee shall submit to the NRC copies of all safeguards event log entries not previously submitted. Each licensee shall submit one copy of their log entries to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555.

(d) Each licensee shall submit to the Commission the 30-day written reports and copies of the safeguards event log entries required under the provisions of this section that are of a quality which will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report of NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

(e) Duplicate reports are not required for events that are also reportable in accordance with §§ 50.72 and 50.73 of this chapter.

4. A new Appendix G is added to read as follows:

Appendix G—Reportable Safeguards Events

Pursuant to the provisions of 10 CFR 73.71 (b) and (c), licensees subject to the provisions of 10 CFR 73.20, 73.37, 73.50, 73.55, 73.60, and 73.67 shall report or record, as appropriate, the following safeguards events.

I. *Events to be reported within one hour of discovery, followed by a written report within 30 days.*

(a) Any event in which there is reason to believe that a person has commited or caused, or attempted to commit or cause, or has made a credible threat to commit or cause:

(1) A theft or unlawful diversion of special nuclear material; or

(2) Significant physical damage to a power reactor or any facility possessing SSNM or its equipment or carrier equipment transporting nuclear fuel or spent nuclear fuel, or to the nuclear fuel or spent nuclear fuel a facility or carrier possesses; or

(3) Interruption of normal operation of a licensed nuclear power reactor through the unauthorized use of or tampering with its machinery, components, or controls including the security system.

(b) An actual entry of an unauthorized person into a protected area, material access area, controlled access area, vital area, or transport.

(c) Any failure, degradation, or the discoveed vulnerability in a safeguard system that could allow unauthorized or undetected access to a protected area, material access area, controlled access area, vital area, or transport for which compensatory measures have not been employed.

(d) The actual or attempted introduction of contraband into a protected area, material access area, vital area, or transport.

II. *Events to be recorded within 24 hours and submitted in quarterly log.*

(a) Any failure, degradation, or discovered vulnerability in a safeguards system that could have allowed unauthorized or undetected access to a protected area, material access area, controlled access area, vital area, or transport had compensatory measures not been established.

(b) Any other threatened, attempted, or committed act not previously defined in Appendix G with the potential for reducing the effectiveness of the safeguards system below that committed to in a licensed physical security or contingency plan or the actual condition of such reduction in effectiveness.

[1] Commercial telephone number of the NRC Operation Center is (301)951-0550.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 74 is revised to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 74.17, 74.31, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and 2201(i)); and 74.11, 74.13, 74.15, and 74.17 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 74.11 is revised to read as follows:

§ 74.11 Reports of loss or theft or attempted theft of special nuclear material.

(a) Each licensee who possesses one gram or more of contained uranium-235, uranium-233, or plutonium shall notify the NRC Operations Center [1] within one hour of discovery of any loss or theft or other unlawful diversion of special nuclear material which the licensee is licensed to possess, or any incident in which an attempt has been made to commit a theft or unlawful diversion of special nuclear material. The requirement does not pertain to measured discards or inventory difference quantities.

(b) This notification made to the NRC Operations Center via the Emergency Notification System if the licensee is party to that system. If the Emergency Notification System is inoperative or unavailable, the licensee shall make the required notification via commercial telephonic service or other dedicated telephonic system or any other method that will ensure that a report is received by the NRC Operations Center within one hour. The exemption of § 73.21(g)(3) applies to all telephonic reports required by this section.

(c) Reports required under § 73.71 need not be duplicated under requirements of this section.

Dated at Bethesda, Maryland, this 21st day of May 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-13135 Filed 6-8-87; 8:45 am]

BILLING CODE 7590-01-M

[1] Commercial telephone number of the NRC Operations Center is (301) 951-0550.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-10-AD; Amendment 39-5639]

Airworthiness Directives; Cessna Model T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 86-01-01R1, Amendment 39-5316, published in the **Federal Register** on May 21, 1986 (51 FR 18573), applicable to Cessna Model T303 airplanes. The AD removed approval for flight into known icing conditions for those Model T303 airplanes with flight in known icing approval. It also added more information to the emergency procedures section of the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM) to aid in the event of an inadvertent icing encounter. The manufacturer has developed an aerodynamic modification for the airplanes which eliminates the unsafe conditions when operating in icing conditions. This amendment restores approval for flight in known icing conditions for those airplanes which install the aerodynamic modification, associated POH/AFM revisions, and would otherwise have been approved for flight in known icing conditions.

DATE: *Effective date:* July 13, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Service Bulletins ME86-17 and ME86-18, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Bennett L. Sorensen, Aerospace Engineer, Wichita Aircraft Certification Office, ACE-160W, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4433.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an alternate method of compliance to AD 86-01-01R1, which removed approval for flight into known icing conditions for certain Cessna Model T303 airplanes was published in the **Federal Register** on February 27, 1987 (52 FR 6001). The proposal resulted from an AD which was written because there were several reported occurrences of rudder/rudder pedal oscillations, pitch oscillations, and uncommanded nose-down pitch changes when conducting flight in icing conditions. AD 86-01-01 and AD 86-01-01R1 were sent to all known registered owners by priority mail on January 2, 1986, and January 17, 1986, respectively. The Final Rule AD 86-01-01R1, Amendment 39-5316, was published in the **Federal Register** (51 FR 18573) on May 21, 1986. The AD removed approval for flight into known icing conditions for those Model T303 airplanes with flight in known icing approval. It also added more information to the emergency procedures section of the Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (POH/AFM) to aid in the event of an inadvertent icing encounter. Cessna Aircraft Company has developed an aerodynamic modification for the airplanes which eliminates the oscillations and uncommanded nose-down pitch changes when operating in icing conditions. This amendment restores approval for flight in known icing conditions for those airplanes which have: (a) installed the aerodynamic modification (Part Number (P/N) SK303-39 (or SK303-39A) called out in Service Bulletin (S/B) MEB86-18); (b) associated POH/AFM revisions (P/N D1596R7-13PH for S/N's T30300001 thru T30300175, P/N D1602R3-13PH for S/N's T30300176 thru T30300247, or P/N D1607R2-13PH for S/N's T30300258 thru T30300315, called out in S/B MEB86-17); and (c) would otherwise have been approved for flight in known icing conditions.

The FAA has determined there are approximately 169 airplanes affected by the proposed amendment to the AD. The cost of modifying these airplanes is estimated to be $990 per airplane. The total cost is estimated to be a maximum one-time fleet cost of approximately $167,310. However, since Cessna Aircraft Company has announced that it is furnishing and installing the kits at their expense, this action will not impose an adverse economic impact on the owners. Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly the proposal is adopted without change (except for minor editorial changes).

Therefore, I certify that this action (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) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By revising and reissuing AD 86–01–01R1, Amendment 39–5316, as follows:

(1) Redesignate paragraph (e) as paragraph (f).

(2) Add a new paragraph (e) to read as follows:

(e) The requirements of paragraphs (a) through (d) do not apply to airplanes equipped with Cessna Part Number SK303–39 (or SK303–39A) (called out in Cessna Service Bulletin MEB86–18) and associated POH/AFM revisions—either Cessna Part Number D1596R7–13PH for S/N's T30300001 thru T30300175, Cessna Part Number D1602R3–13PH for S/N's T30300176 thru T30300247, or Cessna Part Number D1607R2–13PH for S/N's T30300258 thru T30300315 (called out in Cessna Service Bulletin MEB86–17).

This amendment becomes effective on July 13, 1987.

Issued in Kansas City, Missouri, on May 28, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87–13017 Filed 6–8–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154 and 271

[Docket No. RM86–7–000; Order No. 473]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued June 3, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing compression allowances and protest procedures under section 110 of the Natural Gas Policy Act of 1978 (NGPA). 18 CFR 271.1104 (1986), 49 FR 49623 (Dec. 21, 1984). The Commission is amending its regulations to allow first sellers to recover under section 110 of the NGPA the fuel or power costs incurred to drive compressors constructed prior to enactment of the NGPA. The Commission also is amending its regulations to provide parties an opportunity to protest allowances for delivery of natural gas heretofore presumed authorized by "area-rate" clauses in gas contracts.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Peter J. Roidakis, Office of the General Counsel, 825 North Capitol Street NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations at 18 CFR 271.1104 (1986), issued under section 110 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3320 (1982), in two respects. First, the Commission is amending its regulations to allow a first seller to recover the fuel or power costs incurred in driving a compressor constructed on or before November 8, 1978. Second, the Commission is establishing procedures to permit any affected person to rebut the presumption that an area rate clause in a natural gas contract was intended to permit collection of production-related costs for delivery of natural gas. In so doing, the Commission is implementing the decision in *Texas Eastern Transmission Corporation* v. *FERC (Texas Eastern)*, 769 F.2d 1053 (5th Cir. 1985), *cert denied*, 106 S. Ct. 1967 (1986).

II. Background

In Order No. 94–A,[1] the Commission implemented section 110 of the NGPA by promulgating regulations in 18 CFR § 271.1104. These regulations allow first sellers to recover certain costs incurred to perform production-related serices and define the costs a first seller may recover.[2] The Commission also established generic allowances for the delivery and compression of natural gas.[3] *Texas Eastern* involved consolidated appeals challenging, among other things, the Commission's implementation of NGPA section 110 in Order No. 94–A and related orders. The court in *Texas Eastern* affirmed the Commission's production-related cost regulations in all but two respects. The court instructed the Commission to amend its rules to allow a first seller with a pre-NGPA compressor, that is, a compression facility construction of which commenced before enactment of the NGPA, to collect a compression allowance for the costs of fuel or power required to drive the compressor from the same date and to the same extent such costs are recoverable for a post-NGPA compression facility. In addition, the court directed the Commission to provide for a protest procedure, modeled on those established in Order No. 23–B,[4] to allow parties the opportunity to show a particular area rate clause did not authorize the recovery of a delivery allowance.[5] The Commission issued a notice of proposed rulemaking (NOPR) on July 31, 1986, to modify its regulations consistent with the directives of the court in *Texas Eastern.*[6]

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[1] Order No. 94–A, 48 FR 5152 (Feb 3, 1983), FERC Stats. & Regs. [Reg. Preambles 1982–1985] ¶ 30,419.

[2] 18 CFR § 271.1104(c)(7) (1986).

[3] Order No. 334, 48 FR 44495 (Sept. 29, 1983), FERC Stats. & Regs. Reg. Preambles 1982–1985] ¶ 30,495.

[4] Order No. 23–B, "Order Adopting Final Regulations Establishing Protest Procedures Regarding Blanket Affidavit Filings and Interim and Retroactive Collection Filings," 44 FR 38834 (July 3, 1979), FERC Stats. and Regs. [Reg. Preambles 1977–1981] ¶ 30,065; and *reh'g of Order No. 23–B*, 44 FR 48174 (Aug. 17, 1979), FERC Stats. & Regs. [Reg. Preambles 1977–1981] ¶ 30,073.

[5] Texas Eastern, 769 F.2d at 1065. (As a general matter, the court found "unassailable" the Commission's argument that "prior experience under the Gas Act, 15 U.S.C. 717 *et seq.*, supports the construction of area rate clauses as authorizing delivery allowances" but *not* other allowances. *Id.*)

[6] Compression Allowances and Protest Procedures Under NGPA Section 110, 51 FR 28102 (Aug. 5, 1986) (notice of proposed rulemaking).

The Compression Proposal

In the notice of proposed rulemaking, the Commission proposed to amend § 271.1104(d)(1)(iv) to provide a compression allowance for fuel and power costs incurred from July 25, 1980 in driving a pre-NGPA compressor.

The Commission proposed to require certain sellers with pre-NGPA compressors to amend their blanket affidavits [7] covering notice of rate change under the Natural Gas Act before collecting fuel and power costs related to those compression facilities. Sellers already exempted from filing rate schedules [8] also would be exempted from the blanket affidavit requirement. The retroactive fuel and power cost allowances for pre-NGPA compression facilities were proposed to be made payable in a lump sum, with interest, within 60 days after a bill is served on the purchaser.

The Protest Procedure Proposal

In the notice of proposed rulemaking, the Commission proposed to establish a protest procedure for rebutting the regulatory presumption that an area rate clause is intended to permit the collection of production-related *delivery* costs. Specifically, the Commission proposed to amend § 271.1104 of its regulations to provide Commission staff, pipeline purchasers, and other parties in interest, including state commissions and local distribution companies, the opportunity to address whether the contracting parties' intent diverged from the general presumption.

The proposed protest procedure followed the model of Order No. 23–B,[9] as the court had suggested, and would apply to all NGPA categories of gas except sections 105 and 106(b). There was no need for a protest procedure for these categories of gas because they are not covered by the presumption that the area rate clause evidences the purchaser's agreement to pay a delivery allowance.[10] Under the proposal, each interstate pipeline would submit to the Commission lists of producer-sellers that assert contractual authority to collect delivery allowances pursuant to an area rate clause and identify the contracts relied upon by date and contract number, or other satisfactory identification. One list would enumerate those contracts in which the pipeline does not dispute that the area rate clause includes a delivery allowance. The second list would state those contracts in which the pipeline does dispute that the area rate clause encompasses a delivery allowance. In addition, pipelines would be required to file data to support their protest, and any information submitted to the pipeline by the first seller under § 271.1104(f) of the Commission's regulations. To minimize the filing burden, pipelines would be permitted to refer to specific data already on file in purchased gas adjustment (PGA) proceedings or elsewhere with the Commission, rather than file the data anew. Pipelines would update the lists as needed.

The pipeline listing would be published in the **Federal Register** so that other persons might also protest the producer's authority to collect a section 110 allowance under any particular area rate clause. Each protest, whether by the pipeline or by a third party, in turn would be noticed and transmitted to the Chief Administrative Law Judge for assignment to an Administrative Law Judge. The protests would then be set for hearing absent summary disposition.

The standards developed in the Order No. 23 series of orders and the case law interpreting those orders would apply to the summary disposition and hearing process established under this rule. Particularly with regard to overcoming the presumption that an area rate clause "expressly authorizes" a delivery allowance, the Commission stated its intention to apply the standards of *Pennzoil Co.* v. *FERC*, 645 F.2d 360 (5th Cir. 1981) (*Pennzoil I*), and *Pennzoil Co.* v. *FERC*, 789 F.2d 1128 (5th Cir. 1986) (*Pennzoil II*), insofar as they are applicable.

The Commission received seventeen comments on its proposed rule—eight from pipelines, seven from producers and producer associations, and two from local distribution companies and a state agency.[11] The Commission is adopting the proposed regulations with modifications in response to the comments received, as discussed more fully below.

III. Discussion

A. Comments on the Compression Proposal

1. Payment and Billing Deadlines

Several pipelines have requested that the Commission extend the time for pipelines to pay the power and fuel cost allowance beyond 60 days from date of billing. ANR Pipeline Company and Colorado Interstate Gas Company (ANR and CIG), for example, suggest at least 120 days from date of billing; Columbia Gas Transmission Corporation (Columbia) requests that lump-sum payment not be due until twelve months after a bill is served on the purchaser. Columbia also urges that the producer "provide all information to verify the amounts charged." Since this information is already required under the regulations, additonal language would be redundant. Nor is there any reason to extend the payment-due date for power and fuel costs that should be paid promptly to eligible sellers. The Commission declines to adopt a general rule for direct billing of these costs at this time, but would be receptive to filings by pipelines for such direct billing mechanisms where appropriate, as suggested by United Gas Pipe Line Company and Natural Gas Pipeline Company of America. Absent such direct billing authorization, flow-through in Account No. 191 of lump-sum payments will proceed according to established purchased gas adjustment (PGA) procedures. Permission to flow-through such amounts at the time they are made may require an "out-of-cycle" PGA, which may be applied for, if required. However, as suggested by Indicated Producers, (and discussed further below) direct billing of lump sum compression costs (power and fuel allowances) may be allowed on a case-by-case basis where any pipeline is significantly affected, but the requirement for payment within 60 days of the date of billing will remain.

Several pipelines ask that a deadline be set by which sellers must serve on their purchasers bills for the power and fuel cost allowance. Transcontinental Gas Pipe Line Corporation (Transco) asks that a billing deadline of 60 days from the effective date of the final rule be established, and ANR and CIG ask that producer claims be submitted no later than 180 days following publication of the final rule.

The Commission believes that prompt payment and resolution of such claims can generally be expected, since producers generally have an economic incentive to seek payment as soon as possible. There could, however, be circumstances where a seller might indefinitely postpone sending a bill; for example, where a seller is authorized to collect interest at favorable rates for past-due unbilled accounts under his contract, and has no need of immediate cash flow. If there were no billing deadline whatsoever, such "banking" of bills could occur in some cases.

Accordingly, the Commission finds merit in the suggestion that there be

[7] *See* 18 CFR § 154.94(k) (1986), and Appendix B to § 154.94(k) (1986). FERC Stats. & Regs. ¶ 19,194 at 12,791–3 to 12,791–4.

[8] *See* 18 CFR § 154.92(c) (1986).

[9] 44 FR 36834 (July 3, 1979).

[10] 18 CFR § 271.1104(c)(4)(ii)(B) (1986).

[11] *See* Appendix for complete list of persons filing initial comments.

some date certain after which claims could no longer be submitted. The Commission believes that a deadline of 60 or even 180 days may be too short, however, since it may take time for smaller producers to become aware of the rule. The Commission is therefore adopting a billing deadline of one year from the effective date of the final rule. This will provide ample time for all first sellers to become aware of, and submit their claims under the rule.

2. Interest

Several pipelines also express concerns about the automatic collection of interest on power and fuel costs (El Paso Natural Gas Company, Tennessee Gas Pipeline Company (Tennessee), and Transco). Since the Commission's intention is to provide equivalence of treatment for pre-NGPA compressor fuel and power cost allowances, and since retroactive fuel and power costs for post-NGPA facilities only earn interest "if expressly authorized," [12] the Commission will modify proposed § 271.1104(d)(1)(iv)(B)(*2*)(*iii*) to allow recovery of interest for pre-NGPA facility costs only where specific contractual authority exists.[13]

3. Billing Disputes

The remaining, and perhaps more difficult issues raised in the comments about the power and fuel cost allowance relate to procedures for resolving potential disputes over the accuracy and completeness of the supporting data provided by the seller. Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Panhandle and Trunkline), for example, ask that the due date of payment within 60 days of a complete and valid claim still permit the purchaser "to verify * * * calculations and to resolve any limited disputes about the precise amount due in the usual, informal fashion, such as by adjusting the bill or delaying payment of the disputed amount pending discussions or receipt of further explanations." ANR and CIG suggest that where disputes arise over billings, pipelines should be allowed either (1) to suspend payments on disputed amounts until the dispute is resolved; (2) to pay such disputed amounts into an interest bearing escrow account; or (3) to make payment subject to refund plus interest.

The Commission is adopting ANR and CIG's option 3 for treating disputes over billing.[14] The purchaser will be required to pay the producer the amount billed, subject to refund with interest (determined in accordance with § 154.102(c) of our regulations) should the billing subsequently be determined to be inaccurate or unsupported. Requiring prompt payment within 60 days of billing, subject to refund with interest, will avoid the possibility that "verification" requirements will be used as a means of delaying payments. At the same time, it will provide adequate time for purchaser verification. The Commission anticipates that claims for power and fuel costs should be reasonably straightforward. As long as the compression allowance is "expressly authorized" by the contract, a reasonably detailed calculation of the power and fuel costs claimed and costs incurred should satisfy a purchaser acting in good faith. The Commission recognizes that disputes may arise. However, such disputes under the self-implementing framework of Order No. 94–A are essentially contractual and are best resolved by the parties themselves, or at last resort, in an appropriate forum.[15]

4. Miscellaneous Compression Changes

The Commission is adopting two suggestions by Indicated Producers and Phillips with respect to the power and rule allowance. First, the Commission is revising § 271.1104(d)(1)(iv)(B)(*2*)(*iii*) to permit recovery of the power and fuel allowance retroactive from August 10, 1987, to July 25, 1980, or any earlier date on which the seller filed an application with the Commission to recover these costs. This will make such allowances recoverable to the same extent the allowances for post-NGPA facilities are recoverable and clearly define the retroactive period. (Of course, the allowance may be collected prospectively from the effective date of the rule as well.)

Second, as suggested by Indicated Producers and Phillips, the Commission will waive the filing fee for the amended blanket affidavit required to collect the power and fuel allowance for pre-NGPA compressors for a temporary period. The Commission is waiving this fee for a time to encourage prompt filing and because the amended affidavit is necessary only because the initial regulations failed to include an allowance for pre-NGPA compressors.[16] However, the waiver period will not be open-ended but will expire 60 days after the effective date of this rule, on October 7, 1987. After that date, the filing fee will no longer be waived. Additionally, affidavits filed after that date will be effective on the date of filing, as are other affidavits reflecting section 110 costs filed after May 6, 1983 (*see* 18 CFR 154.94(k)(4)).[17]

In response to a request from ANR and CIG, the Commission clarifies that any pre-NGPA power and fuel cost reimbursement is required only to the extent the compression meets the 3.5 to 1 ratio (of the outlet pressure of the last stage of compression to the inlet pressure of the first stage of compression) applicable to post-NGPA compression. See 18 CFR 271.1104(d)(1)(iv)(A) (1986). This accords equal treatment to pre-NGPA and post-NGPA compression facilities.[18]

B. Comments on the Protest Procedure Proposal

1. Relation of NGPA Sections 601 and 110

Virtually all producer commenters argue that the protest procedure for delivery allowances should not apply to NGPA section 102(c), 103(c), and 107(c)(1)–(4) gas because such volumes (and others) are removed from the Commission's Natural Gas Act (NGA) jurisdiction by NGPA section 601(a)(1)(A) and (B), and in *Pennzoil I* the court determined the Commission lacks jurisdiction to interpret contracts with respect to these sections.

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[12] *See* 18 CFR § 271.1104(e)(2) (1986).

[13] *See also Texas Eastern* at 1066 n.27.

[14] This is consistent with the Commission's general rule governing refund obligations. Pipelines, as ANR and CIG suggest, may challenge the level of fuel reimbursement claimed by a producer.

[15] The methods for resolving disputes over power and fuel costs are the same methods available for other Order No. 94 disputes, as suggested by ANR and CIG.

[16] As suggested by Phillips, producers filing amended blanket affidavits must use the term "power and fuel" when amending Exhibit A to the affidavit to facilitate administration of the new allowance for pre-NGPA-installed compressors.

[17] The Commission is also making a number of technical clarifications. In response to Tennessee's request, the regulatory text will be amended by inserting "(§ 271.1104(d)(1)(iv)(B))" following "under this paragraph" and "amounts owed under this paragraph," in §§ 271.1104(d)(1)(iv)(B)(*2*)(*ii*) and (*iii*), respectively, to make the reference to the paragraph clear. The Commission also clarifies that under § 271.1104(d)(1)(iv)(B)(*2*)(*i*), the blanket affidavit under § 154.94(k) and Appendix B thereto must be amended (or filed, if an affidavit has not been previously filed), prior to collecting the allowance. (The second comma in subparagraph (*i*) will be deleted to make this clear).

[18] To make clear when filed blanket affidavits to collect fuel or power costs will become effective the Commission is amending § 154.94(k) (4) and adding § 271.1104(d)(1) (iv)(B)(*2*)(*iv*). The regulatory text at § 154.94(k)(4) will be amended by inserting "§ 271.1104(d)(1)(iv)(B) and" following "Except as otherwise permitted for delivery and compression allowance under" and the new § 271.1104(d)(i)(iv)(B)(*2*)(*iv*) provides that blanket affidavits to collect fuel or power costs that are filed within 60 days of the effective date of this order shall become effective on the effective date of this order and blanket affidavits filed more than 60 days after the effective date of this order will become effective on the date of filing.

The Commission does not agree that NGPA section 601(a)(1) removes its authority to adopt the delivery allowance protest procedures for contracts covering gas removed from it Natural Gas Act jurisdiction. Section 601(a)(1) (A) and (B) provide that "the provisions of the *Natural Gas Act* and the jurisdiction of the Commission under the Act shall not apply" to various categories and vintages of gas. At issue is whether this section of the NGPA removes the Commission's jurisdiction to adopt rules under section 110 of the NGPA governing the collection of delivery allowances under contracts for these various categories and vintages of gas. We note that the Commission's authority to adopt these protest procedures is *not* derived from the Natural Gas Act, but rather comes from section 110 of the NGPA. The allowable add-on procedures were implemented in Order No. 94–A, which the court upheld in *Texas Eastern*. The Commission reads the *Texas Eastern* decision as requiring it to establish protest procedures for all delivery allowances collected under NGPA section 110, not just for allowances for Natural Gas Act gas. If the procedures were only applicable to certain categories of price-regulated gas, as the producers claim, uniform implementation of section 110 would be encumbered.

Another point the Commission wants to emphasize is that the section 110 delivery allowances only apply to gas which is still subject to a maximum lawful price. Once gas is price-deregulated under section 121 of the NGPA, there is no regulatory purpose served by imposing any procedures or limitations on the collection of add-ons to the contract price. This is consistent with the language of section 110 itself, which provides that "a price for the first sale of natural gas shall not be considered to exceed *the maximum lawful price applicable to the first sale of such natural gas* under this subtitle if such first sale price exceeds the maximum lawful price to the extent necessary to recover" production-related costs.

2. Refund Procedures

Pogo Producing Company (Pogo) asks that the Commission make clear that the generic allowance for delivery services rendered during the period an area rate clause is protested may continue to be collected pending a final and unappealable decision by the Commission in the protest proceeding, and any refund resulting from implementation of the protest procedures is not payable until the protest procedure and administrative appeals are concluded. The Commission grants this clarification to ensure that unwarranted adjustments and readjustments to accounts are avoided and that refunds are made only upon issuance of a final Commission order. This clarification will preclude the aggressive use of the billing adjustment provision at § 270.101(f) of the Commission's regulations by an overzealous purchaser to pay itself refunds before a final decision on the merits.

Pogo also suggests that if a protest is ultimately upheld, an optional installment method of refunds should be available to minimize potential economic hardship on producers making refunds. This suggestion has merit and is consistent with previous installment payment provisions in Order No. 93–A (where Btu refunds could be spread over six or twelve months depending on the producer's size) and Order No. 94–A (where retroactive generic allowances could be spread over as much as twenty-one months). Refunds payments in installments will also limit any potential misuse of the pipeline's PGA filing as an artificial marketing tool by including lump sum refunds in one PGA filing. Petitions to make installment payments may be filed with the Commission, setting forth the proposed method and period of disbursement. Purchasers will have an opportunity to answer the seller's proposal, and the Commission will make a determination on a case-by-case basis. As a rule-of-thumb, however, payment extensions over a six- or twelve-month period depending on the producer's size—as was done with Btu refunds—will represent the outer limits of the payment extension.

3. Operation of Delivery Allowance Presumption

Indicated Producers and Producer Associations request certain clarifications regarding the operation of the presumption that an area rate clause encompasses a delivery or gathering allowance and the burden of proof in protest procedures where that presumption is operative.

Indicated Producers request that the Commission clarify that even if a protester overcomes the presumption, the trier of fact may still consider the predicated facts—such as the parties' assertions of intent to pay and collect a delivery allowance, their course of dealings, and the long-standing practice of the Commission and industry to consider area rate clauses as sufficient authority to collect gathering allowances—and may infer from those facts that contractual authority exists. Indicated Producers also ask that the Commission make clear that

> [i]f the competing extrinsic evidentiary contentions of the protesters and the seller, i.e., evidence apart from the predicate facts, are in equipoise, or if the extrinsic evidence is ambiguous, then the seller may establish the claimed contractual authority by a preponderance of the evidence based upon the probative weight of the predicate facts.[19]

The Commission is granting the clarifications requested since they fully conform to the court's decision in *Pennzoil II*[20] as discussed in the notice of proposed rulemaking.

It was the Commission's intent that once sufficient evidence is presented to overcome the presumption, "[e]videntiary weight may still be given to the parties' assertions and to the contractual language" and other predicate facts in reaching a decision.[21] This conforms to the two *Pennzoil* decisions,[22] particularly *Pennzoil II*, which supports the view that the contract language, the parties' course of dealings, and the long-standing practice of the Commission and the industry out of which the presumption arises remain, and may be given probative weight to determine the preponderance of the evidence.

Producer Associations argue that even after the presumption has been overcome, the protesting pipeline or third party should bear the burden of proof and that any refund decision in a protest proceeding should have prospective effect only because rate schedules in most cases will already have been accepted under section 4 of the NGA. Under section 5 of the burden of proof is on the person seeking a changed rate, and the changed rate can only take effect prospectively.

The Producer Association's arguments based on NGA section 5 rate concepts are inapposite to NGPA delivery allowance collection and to the court-ordered procedures for protesting a delivery allowance. The protest procedures do not amount to an NGA section 5 rate case. Rather, their purpose is to determine whether a contractual

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[19] Indicated Producers Initial Comments at 16.

[20] Pennzoil Co. v. FERC, 789 F.2d 1128 (5th Cir. 1986).

[21] 51 FR 28104 (Aug. 5, 1986).

[22] Pennzoil Co. v. FERC, 645 F.2d 360 (5th Cir. 1981) (*Pennzoil I*), and Pennzoil Co. v. FERC, 789 F.2d 1128, 1137 (5th Cir.) (*Pennzoil II*), *quoting McCormick on Evidence*, § 345(A) at 821 (the presumption, even though it has been removed as a presumption, remains in respect to the evidentiary facts upon which it was established, which may still be considered by the trier of fact. In short, the legal consequence of the presumption being removed, the inference, as a matter of reasoning, may still remain).

agreement existed to authorize payments of a delivery allowance for costs incurred at some time in the past.[23] Accordingly, the Association's suggestion is not adopted. Nor does the protesting pipeline or third party always bear the burden of proof in such protest procedures. While the protester has the initial burden of coming forward with substantial evidence to overcome the presumption that an area rate clause encompasses a delivery allowance, one the presumption is overcome the party or parties asserting that such delivery allowance was intended by the area rate clause bear the burden of persuasion by a preponderance of the evidence. The Commission wishes to stress again, however, that evidentiary weight may still be given to the predicate facts that buttressed the presumption even after the presumption has been dispelled.

4. Proposals to Expand Procedures

Indicated Producers argue that what they term the "presumption" against the collectibility of compression allowances under an area rate clause should also be rebuttable, and that it was error to limit protests to delivery allowances, since the court's instructions, in their view, can be read as recommending protests for compression allowances as well. Phillips Petroleum Company and Phillips 66 Natural Gas Company (Phillips) echo this view. In addition, Phillips suggests that the allowance for compression proposed by the rule should be referred to as a "power and fuel allowance" to distinguish it from the Commission's post-NGPA generic compression allowance.

The Commission agrees with the commenter's latter suggestion and adopts the term "power and fuel allowance" for the pre-NGPA compression allowance. The Commission declines, however, to provide a protest procedure for disputes over the power and fuel allowance. Phillips and indicated producers appear to have misunderstood the essential structure of Order No. 94f–A and the court's directive in *Texas Eastern*. Order No. 94–A created no "presumption" against compression allowances. Rather, the guiding principle of Order No. 94–A was contractual self-implementation by the parties, and this required that all allowances thereunder must be "expressly authorized" by contract.[24] Only delivery allowances were presumed to be "expressly authorized" under area rate clause,[25] because of the historic practice of the Commission to encompass gethering costs under such clauses. Thus, what the producer-commenters call a "presumption" that compression allowances are not collectible is not a presumption at all, but simply reflects the operation of the general rule of Order No. 94–A that any allowance thereunder be "expressly authorized" by contract.

This general rule was fully affirmed by the court in *Texas Eastern*. As a general matter, the court found "unassailable" the Commission's argument that prior experience under the Gas Act, 15 U.S.C. 717.717w (1982), supports the construction of area rate clauses as authorizing delivery allowances, but not other allowances.[26] Whild the Commission does not intend to prejudge the issue of the collection of any particular pre-NGPA compression allowance, as some commenters claim, it reiterates that any power and fuel allowance must be "expressly authorized" by contract. The producer-commenters' strained reading of the *Texas Eastern* decision is essentially based on one word—the court's use of the plural "presumptions" when it referred to the protest procedure for delivery allowances. Far from including compression in the sweep of area rate clause protests, this language refers to the variety of area rate clauses, and the multiplicity of intents and rebuttable presumptions that might arise under them with respect to allowances for the gathering of natural gas—the only presumption created under Order No. 94–A. Accordingly, the Commission declines to adopt Indicated Producers' related request to delete the opening phrase of § 271.1104(d)(1)(iv)(B)(*1*): "If expressly authorized pursuant to paragraph (c)(4)(ii)(A) of this section." It is neither redundant nor prejudicial to restate the general rule of the self-implementing Order No. 94–A procedures that all allowances thereunder must be "expressly authorized" by contract.

5. Proposals to Streamline Procedures

Several commenters suggest ways to streamline the evidentiary standares in light of experience under the Order No. 23 series, in order to mitigate any significant economic impact on a substantial number of small entities.

Bass and Samson, for example, characterize Order No. 23 as a regulatory "maelstrom" and urge that care be taken in interpreting the *Texas Eastern* court's instruction to "model" procedures on Order No. 23. These commenters even suggest the court's directive can be read to limit protests to contracting parties. The Commission finds Bass and Samson's rational thin on this point[27] and declines to adopt it. However, the Commission does believe that the court's suggestion of use of Order No. 23 as a model does not preclude narrowly interpreting third-party access to participation in the protest procedures in the context of their application for NGPA section 110 purposes.

Bass and Samson make two chief suggestions: (1) Provide for dismissal of protests where the subject area rate clause was already found to authorize collection of the highest prices permitted by law in Order No. 23–B proceedings, and (2) where pipelines didn't protest collection of NGPA maximum lawful prices under area rate clauses, they may not now protest collection of section 110 delivery costs based on area rate language alone. In such cases a pipeline (or third-party) may protest only where specific contract language precludes production-related cost collection, or clear, substantial extrinsic evidence directly contradicts the producer's intent to collect such costs.

The Commission declines to adopt the first suggestion. The first suggestion is rejected because it comes close to subverting the *Texas Eastern* court's order that protest procedures with respect to the parties' intent to collect section 110 costs under area rate clauses is an issue separate and apart from whether the area rate clause has been determined to authorize collection of the applicable maximum lawful price under the NGPA. Since NGPA section 110 costs are "not considered to exceed the maximum lawful price applicable" to the gas, their collection under area rate clauses represents an issue of intent

[23] Costs incurred in providing that service prior to March 7, 1983, but after the earlier of July 25, 1980, or the date on which the seller filed an application with the Commission to recover these costs; provided that the seller is expressly authorized, as defined in paragraph (c)(4) of this section, to provide such service and be compensated for so doing, and that this authorization was in effect during the period the costs to be collected were incurred; however, amounts so collected must be reduced by any amounts collected prior to March 7, 1983, to recover these costs. (*See* 18 CFR 271.1104(e)(1) (1986).)

[24] This means a contract provision "expressing an amount, or a method for determining an amount, that the purchaser agrees to pay the seller for providing the specified service." 18 CFR 271.1104(c)(4)(ii)(A) (1986).

[25] CFR 271.1104(c)(4)(ii)(B) (1986).

[26] Texas Eastern, 769 F.2d at 1065.

[27] "[B]y reference to an aggrieved party's attempt to show that *'its'* area rate clause is not subject to the Commission's presumption that area rate clauses authorize the collection of delivery allowances, (the court) seems to suggest that the section 110 protest procedures be limited to contracting parties." Bass and Samson Initial Comments at 6.

arguably separate from the question of intent to collect the NGPA maximum lawful price under the area rate clause. For this reason, and the unequivocal nature of the court's directive, the Commission declines to adopt Bass and Samson's first suggestion.

The Commission finds the second suggestion, however, to be generally consistent with the standards for obtaining a hearing under the Order No. 23 "model" procedures. Bass and Samson's second suggestion, related to the evidentiary standards that must be met in order to obtain a protest and hearing and avoid dismissal, is adopted insofar as it conforms with the model standards requested by the court. In Opinion No. 135 [28] the Commission clarified the standards that must be met *both* to rebut a certain presumption about contract interpretation *and* to avoid summary dismissal of protests to the interpretation favored by the presumption. The Commission has decided to adopt similar standards here for examining protests of the collectibility of production related costs of delivery under area rate clauses. Accordingly, in order to rebut the presumption of collectibility and avoid summary dismissal, a protest must be supported by: (1) Contract language which *precludes* a reasonable person from interpreting the contract as intended to provide for the collection of production related costs of delivery, or (2) reliable and probative extrinsic evidence specifically contradicting that interpretation and dispositive against the presumption favoring that interpretation.[29] Accordingly, we generally adopt Bass and Samson's limits on the threshold requirements for rebutting the presumption and thereby avoiding summary dismissal of a protest, insofar as they conform to the Opinion No. 135 standards.[30]

The chief administrative law judge should therefore generally not entertain protests supported by evidence that merely disagrees with the Commission's characterization of prior practice under the Natural Gas Act, or attacks the reasonableness of the area-rate delivery-allowance presumption itself, since it has been sustained in *Texas Eastern*. Such "blanket" protests would arguably not meet the Opinion No. 135 tests for rebutting the presumption, which are also the evidentiary threshold requirements for avoiding dismissal of a protest and obtaining a hearing.[31]

6. Filing Requirements

Indicated Producers ask that the Commission expressly authorize pipelines to make references back to their original and supplementary evidentiary submissions filed pursuant to Order No. 23–B in fulfillment of data filing requirements under proposed § 271.1104(h). This was the Commission's intent in the notice of proposed rulemaking, and § 271.1104(h)(1) will be amended to expressly include "original or supplementary evidentiary submission" as a document that may be referred to without filing.

Indicated Producers also ask that the Commission either require protesters to serve copies of their protests upon affected first sellers, or require purchasing pipelines receiving protests to do so, as in the Order No. 23 series. The Commission finds merit in this suggestion and will modify the notification of protest procedure by amending § 271.1104(h)(6)(i) to require the pipeline purchaser or third-party protester to serve each affected first seller with a notice of any protest. Pipelines will provide names and addresses of such affected first sellers to third parties for this purpose. Producer Associations request that the purchaser be required to serve each working interest owner with a notice of any protest. We shall deny this request since the identity of each working interest owner is not necessarily known to the purchaser. In most cases, the affected first seller acts as representative for other interest owners in a fiduciary relationship and is the proper party to be served with a notice of protest.

Several pipeline commenters [32] believe the filing requirements in the protest procedures are unfairly placed on pipelines and that producers, not pipelines, should be required to file lists of contracts they believe authorize delivery costs under an area rate clause. In addition to shifting the filing burden, Columbia suggests allowing pipelines 90 days to determine whether they agree and to file the respective lists proposed in the notice.[33]

The Commission is not inclined to shift the filing burden from pipelines to producers. The Order No. 23 filing burden, which was also placed upon pipelines, is the pattern on which the court directed the instant procedures be modeled. The Commission is sensitive to the Regulatory Flexibility Act requirements and has attempted to shield a significant number of small producer entities from any initial filing burdens. The Commission believes it is also administratively more manageable to require filings from a few large entities than from a multitude of small ones. Furthermore the Commission has lessened the burden on the interstate pipelines to a great extent by permitting them to reference data already on file with the Commission rather than file it anew. To respond to the pipeline commenters' concerns, however, the Commission will extend the time for filing the pipeline submissions from 60 days from **Federal Register** publication of the final rule to 90 days, and will amend § 271.1104(h)(4) accordingly.

Some pipeline commenters [34] suggest that, at minimum, the Commission should only require a pipeline to file information for contracts under which a pipeline doesn't dispute claims and has been paying production-related delivery costs, so that third parties could protest.[35] Mountain Fuel also requests that the Commission allow pipelines to consolidate information concerning claims on one document and, to the extent producers filed unique documents, to include those. Then, if others protest, the actual documents could be submitted.[36]

The Commission has determined not to limit pipeline filings to situations where the pipeline *does not* dispute claims. Such a limitation would depart drastically from the Order No. 23 model, and would hinder third parties from

[28] *Transcontinental Gas Pipe Line Corporation*, 17 FERC ¶ 61,232, Opinion and Order Remanding for Limited Purposes, Docket No. GP80–24, (Dec. 11, 1981).

[29] *See id.* at 61,450–51.

[30] A protest will thus be dismissed unless (1) specific contract language precludes a reasonable person from interpreting the contract as intended to provide for the collection of production-related costs of delivery, or (2) reliable and probative extrinsic evidence specifically contradicts and is dispositive against the presumption favoring that interpretation.

[31] Compare rejection of "blanket protests" in Associated Gas Distributors *et al.* v. FERC, No. 84–1454, slip op. at 16 (D.C. Cir. Jan. 23, 1987) ("The generality of petitioners' proffer renders it an impermissible collateral attack on, and not a rebuttal of, a presumption upheld in previous litigation and not open to relitigation.")

[32] *See* Panhandle and Trunkline, and Columbia initial comments.

[33] The notice of proposed rulemaking would have required pipelines to publish such lists without producer help, and within 60 days after the rule is published.

[34] *See* Mountain Fuel, Panhandle and Trunkline initial comments.

[35] Mountain Fuel also suggests that where a producer and pipeline are deadlocked over a claim and have decided to ask the Commission to resolve the dispute, the pipeline would file the required data.

[36] Mountain Fuel would have the producer, not the pipeline, submit these documents. Since the pipeline will already have the documents, the Commission believes it will not be unduly burdensome for the *pipeline* to photocopy and serve the documents. As discussed *supra*, administrative concerns and other factors militate against shifting any of the filing duties onto the numerous seller small entities that may be involved.

joining the protest of claims disputed by the pipeline. The Commission is willing to allow pipelines to consolidate information concerning claims on one document and, to the extent producers filed unique documents, to include those. However, the pipeline would be required to file those documents with the Commission.

Tennessee asks the Commission to make clear that by filing its statements of contractual authority, no pipeline thereby waives its right to contest any pricing provision as a "so-called" area rate clause. Tennessee also requests a clarification that any payments already made may be recovered by a pipeline under appropriate circumstances.

The Commission is willing to grant the clarifications requested by Tennessee but with a *caveat* based on the discussion, *supra*, regarding the evidentiary standards that must be met to avoid summary dismissal. Clearly, a pipeline, by the mere ministerial listing of contract data does not waive any rights. However, if a pipeline has been paying an allowance, it has the burden to show the parties' intent differed from that alleged by the seller, and was actually an intent *not* to pay, even though the pipeline *did pay* the allowance. Conceivably, there may be circumstances where the parties did not intend a particular area rate clause to encompass a delivery allowance, which might justify recovery of payments erroneously paid.

Southern California Gas Company (SoCal), and Asociated Gas Distributors and the Department of Public Service of the State of New York (AGD and New York) are concerned that the data and information filed by the interstate pipelines be made available to the customers of the pipelines and interested state commissions. SoCal states that only the pipeline "lists" are now published, not the underlying data. AGD and New York ask that the Commission clarify that the Commission intended that the text of any contract provisions, and any other evidence which the pipeline believes constitutes, or may constitute, contractual authority to collect delivery allowances "is subsumed within the category of 'data' supporting the pipeline's position as to the seller's contractual authority." [37] The Commission did intend that the data required to be filed would encompass contract text and other evidence as was the case in the Order No. 23–B procedures, [38] and grants AGD and New York's clarification as to the point. The Commission declines to require that such data be filed with a pipeline's customers or interested state commissions. The Commission wishes to minimize the filing burden on pipelines as much as possible. The data will be in the public files of the Commission to which any interested customers or state commissions will have access. Furthermore, the Commission has extended the protest deadline to 90 days from publication of the pipeline lists under § 271.1104(h)(4), which should provide ample time for third parties to review the data in the Commission's files.

7. Settlement Negotiations

Mountain Fuel is concerned that the Commission not preclude potential settlement by the parties themselves. To this end, it proposes that pipeline filings be permissive rather than mandatory [39] so that a protest proceeding would not be initiated automatically, thereby disrupting ongoing negotiations. Mountain Fuel further proposes that the Commission state that pipelines need not make filings to agree or disagree with producer claims where producers (1) have said they would file a claim but never followed up with details; (2) have provided details but never responded to pipeline objections; or (3) have formally settled or waived a claim.

The Commission will modify the proposed rule to accomodate ongoing settlement of disputes but declines to adopt Mountain Fuel's suggestions which leave a great deal to the unilateral discretion of the purchasing party and may hinder conclusive resolution for all disputed area clauses as envisioned in *Texas Eastern*. The Commission will modify § 271.1104(h)(4) to allow contracting parties to waive the former 60-day (now 90-day) filing deadline by written mutual agreement in furtherance of voluntary settlement of protests. (*See* discussion *supra*.) The waiver agreement may not extend further than 180 days from the date the protest would otherwise be due, and must be filed with the Commission. This approach, unlike Mountain Fuel's proposal, permits ongoing settlement negotiations to extend the filing deadline by *mutual* agreement, and yet provides a date certain at which closure must be reached and the underlying data filed for others to evaluate and protest. Thus, the issues will be joined for determination without unwarranted delay, and reasonable efforts at settlement will be supported. Mountains Fuel's recitation of situations where producers never filed a claim or failed to provide follow-up data is not a persuasive reason for adopting Mountain Fuel's suggestion which would effectively eliminate many pipeline filings and shield numerous potentially valid claims from review. Producers may not have filed a claim or follow-up data because of unreasonable data requests by the purchasing party, or a perception on the seller's part that the effort would be futile. Of course, if parties have formally settled or waived a claim in writing, they would ordinarily be bound by it.

Finally, Indicated Producers make some technical suggestions to encourage settlements. While supporting the 60-day time limit for third-party protests, they request that parties be allowed to waive the 60-day limit in order to encourage settlements without litigation. The Commission is adopting this suggestion to further its policy of encouraging settlements, and proposed § 271.1104(h)(4) will be amended accordingly, to require filing of such waiver agreements with the Commission, but with an outer limit on such waivers of 180 days in order to encourage prompt closure of any potential dispute. The Commission is also extending 60-day time limit for third party protests to 90 days, even where no waiver is obtained, as discussed *supra*, in response to requests from potential third-party protesters.

8. Miscellaneous

a. *Technical conference.* AGD and New York note that the pipeline may refer to documentation already on file. AGD and New York suggest that an informal technical conference could address any practical problems that might arise regarding these filing requirements. The Commission does not see the need for a technical conference at this time, but confirms that when it eased the pipeline's filing burden by allowing references to documentation already on file, it understood that such documentation would be complete, adequately identified and described, and reasonably accessible. If the sufficiency of documentation or reasonable access to it becomes an

[37] AGD and New York initial comments at 2.

[38] *See* 18 CFR § 154.94(j)(1)(iv)(B) (1986).

[39] Mountain Fuel also suggests that a claim might be presented to the Production-Related Costs Board (or to an ALJ) if the dispute cannot be resolved by the parties. The Commission declines to adopt this suggestion. The Commission has determined to administer section 110 delivery protests as it did the Order No. 23 protests—through the Chief Administrative Law Judge and the respective presiding administrative law judges. To do otherwise would not only strain the limited resources of the Board, but would arguably be discontinous with the Order No. 23 model without good reason.

issue in a particular case, it should be brought to the Commission's attention.

b. *Previous agreement for Btu-offset purposes.* Producer Associations and CNG Producing Company (CNG) request that where a purchaser has already paid the delivery allowance under an area rate clause, it should be presumed to have intended its authorization, and should not be allowed to list that contract as "disputed" as its past expressions of intent should be binding on it. The Commission finds some merit to this suggestion but declines to adopt it out of a desire to conform fully with the court's order. However, the Commission will clarify that where a pipeline has paid or is paying the delivery allowance without dispute, such conduct is relevant with respect to intent, and may even constitute a contract amendment under state law.[40] Yet, because of the multitude of possible reasons for a purchaser making payment, and the variety of intents expressable under various area rate clauses, as well as the varying state laws that may apply, the Commission is reluctant to foreclose entirely any pipeline from disputing an allowance it has previously paid. However, where a pipeline purchaser has agreed with its producer-seller as to the intent and sufficiency of its authorization for delivery allowances for purposes of Btu-offset procedures, the pipeline should be estopped from challenging the delivery allowance in the proposed protest procedures.[41]

IV. Final Regulatory Flexibility Analysis

Whenever the Commission is required by section 553 of the Administrative Procedure Act (APA) [42] to publish a general notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) [43] to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA). After comments on the IRFA are received a final analysis is prepared. The analysis must describe the impact the proposed rule will have on small entities. The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules that may significantly affect small business and small government entities and to encourage cost-benefit analyses of these rules as well as the agency's consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on these small entities. The Commission is not required to make an RFA analysis, however, if it certifies that a rule "will not, if promulgated, have a significant economic impact on a substantial number of small entities." [44]

In the notice, the Commission presented its reasons for this agency action, its objective and the legal basis for this rulemaking. As discussed, the final rule would allow small producers to recover the fuel or power costs in driving certain compressors and establishes procedures to permit any affected person to rebut the presumption that an area rate clause in a natural gas contract permits collection of production-related delivery costs.

This rule could affect approximately 10,000 natural gas producers, a significant proportion of which would probably be classified as small businesses.[45] However, the Commission has minimized any disproportionate burden the proposal would have on small producers. The final rule does require producers to amend their blanket affidavits covering notices of rate change, but waives filing fees for such amendments, and the Commission regulations relieving small producers from most filing requirements are not affected,[46] and remain applicable. Similarly, the Commission does not impose any reporting requirements on producers under the protest procedures. Instead, all reporting requirements are imposed on pipeline-purchasers. A producer becomes involved in a particular proceeding only after a protest is lodged. Furthermore, in proposing protest procedures, the Commission is attempting to satisfy the directive of the United States Court of Appeals for the Fifth Circuit in *Texas Eastern.*

The Commission believes the rule, as proposed, represents a fair balance that would satisfy the mandate of the court and fulfill the purpose of the Regulatory Flexibility Act. In response to one comment on the IRFA, the Commission reiterates that many small producers will not need to participate in the protest procedures because any amounts in controversy are likely to be relatively small and most small producers will negotiate any disagreements over contractual intent with the pipeline. The Commission has also modified the final rule to facilitate such negotiation. In addition, the Commission does not believe that participation in the protest procedures will be unduly burdensome or costly. For these reasons, the Commission certifies that the rule "will not, if promulgated, have a significant economic impact on a substantial number of small entities."

V. Paperwork Reduction Act Statement

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [47] and OMB's regulations.[48] Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (Attention: Ellen Brown, Information Collection Analysis Branch, (202) 357–8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for Federal Energy Regulatory Commission).

VI. Effective Date

This final rule is effective August 10, 1987.

List of Subjects

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 271

Continental shelf, Natural gas, Price controls, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 154 and Part 271, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 is revised to read as follows:

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[40] Bass Enterprises Production Co. and Samson Resources Company (Bass and Samson) express this view.

[41] *See* CNG comments at 2. Equity would seem to require that a person that has benefited from the assertion of one version of its intent be estopped from later denying that intent in order to avoid a detriment.

[42] 5 U.S.C. 553 (1982).

[43] 5 U.S.C. 601–612 (1982).

[44] 5 U.S.C. 605(b) (1982).

[45] 5 U.S.C. 601(c) (1982), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines small business concern as a business which is independently owned and operated and which is not dominant in its field of operation.

[46] 18 CFR 157.40 (1986).

[47] 44 U.S.C. 3501–3520 (1982).

[48] 5 CFR 1320.12 (1986).

Authority: Natural Gas Act, 15 U.S.C. Secs. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. Secs. 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. Sec. 8701 (1970), unless otherwise noted.

2. In § 154.94, paragraph (k)(4) is revised to read as follows:

§ 154.94 Changes in rate schedules.

* * * * *

(k) *Affidavit to collect production-related costs.* * * *

(4) *Effective date of coverage under affidavit.* Except as otherwise permitted for delivery and compression allowances under § 271.1104(d)(1)(iv)(B) and § 271.1104(e), an affidavit filed under this paragraph by May 6, 1983, shall become effective with respect to deliveries beginning on March 7, 1983; an affidavit filed under this paragraph after May 6, 1983, shall become effective on the date of filing with respect to deliveries beginning on and after the date of filing. Any amendment filed under paragraph (k)(2) of this section will be subject to the filing requirements of § 154.92 of this chapter.

* * * * *

PART 271—CEILING PRICES

3. The authority citation for Part 271 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. Secs. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. Secs. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. Secs. 3301–3432 (1982).

4. In § 271.1104, paragraph (d)(1)(iv) is revised to read as follows:

§ 271.1104 Production-related costs.

* * * * *

(d) *Amounts necessary to recover production-related costs.*—(1) *General rule.* * * *

(iv) *For compression facilities.*—(A) *For recent compression facilities.* For compressing natural gas by compressor facilities, the construction of which commenced on or after November 9, 1978, used to effectuate delivery of such gas to any interstate pipeline, intrastate pipeline, local distribution company or any person for use by such person, the seller may collect an amount not to exceed:

(*1*) Six cents ($0.06) per MMBtu for each qualified stage of compression set at a ratio of 3.5 to 1 (representing the overall compression ratio of the outlet pressure of the last stage of compression to the inlet pressure of the first stage of compression), not to exceed three stages; plus

(*2*) The cost of fuel or power to drive the compressor.

(*3*) For purposes of the compression allowance under this clause, "construction" of facilities includes the complete and necessary replacement of old facilities with new facilities and the necessary addition of any new stage of compression to existing facilities.

(B) *For old compression facilities.*—(*1*) *Authority for collecting the allowance.* If expressly authorized under paragraph (c)(4)(ii)(A) of this section, for compressing natural gas by compressor facilities, the construction of which commenced on or before November 8, 1978, used to effectuate delivery of such gas to any interstate pipeline, intrastate pipeline, local distribution company or any other person for use by such person, the seller may collect the cost of fuel or power to drive the compressor.

(*2*) *Procedure for collecting the allowance.*—(*i*) *Blanket affidavit.* If a seller has made an effective filing under § 154.94(h) of the Commission's regulations, prior to collecting the allowance, the seller must amend its blanket affidavit under § 154.94(k) and Appendix B, or file a blanket affidavit under § 154.94(k) and Appendix B, if it has not previously done so.

(*ii*) *Method of payment.* Amounts owed under this paragraph (§ 271.1104(d)(1)(iv)(B)) are due in a lump sum payment within 60 days of the submission required under paragraph (f) of this section, for each qualified stage of compression set at a ratio of 3.5 to 1.

(*iii*) *Retroactivity.* Amounts owed under this paragraph (§ 271.1104(d)(1)(iv)(B)) may be collected retroactive from August 10, 1987, to July 25, 1980, or any earlier date on which the seller filed an application with the Commission to recover these costs, with interest computed under §§ 154.102(c)(2)(iii) (A) and (B) of this chapter, if interest is expressly authorized by contract.

(*iv*) *Effective date of blanket affidavit.* Blanket affidavits filed under § 154.94(k) of this chapter to collect amounts owed under this paragraph (271.1104(d)(1)(iv)(B)) that are received within 60 days of August 10, 1987, shall become effective on August 10, 1987; a blanket affidavit filed more than 60 days after August 10, 1987, shall become effective on the date of filing.

* * * * *

5. In § 271.1104, a new paragraph (h) is added to read as follows:

§ 271.1104 Production-related costs.

* * * * *

(h) *Pipeline list submissions and protest procedure*—(1) *Pipeline filings.* The information required by § 271.1104(h) (2) and (3) must be filed with the Commission within September 8, 1987. A pipeline may submit the contractual authority to collect delivery allowances pursuant to any area rate clause:

(i) A statement specifying for each first seller whether, in the opinion of the interstate pipeline, that first seller has, or does not have, contractual authority to collect production-related costs permitted under § 271.1104 of this chapter;

(ii) Any data that supports the statement made under paragpraph (h)(2)(i) of this section;

(iii) A copy of any data submitted under paragraph (f) of this section for each first seller; and

(iv) The rate schedule number (or if none has been assigned, the date of the contract) and the name of the seller for each first sale of natural gas where the seller has made a submission under paragraph (f) of this section.

(3) *Lists of first sellers.* An interstate pipeline must also file a list of first sellers and a list of the respective contracts that the pipeline identified under paragraph (h)(2) of this section to be published by the Commission in the **Federal Register.**

(4) *Pipeline, third-party, and staff protests.* A protest to the delivery allowances claimed on the pipeline submissions filed under paragraph (h)(2) of this section must be submitted to the Commission, within 90 days of the publication in the **Federal Register** of the pipeline list, described in paragraph (h)(3) of this section, referencing the contract which governs the filed-for production-related delivery costs to which the protestant objects. Parties may waive the 90-day filing deadline by written mutual agreement, in furtherance of voluntary settlement of protests. The waiver agreement may not extend further than 180 days from the date the protest would otherwise be due, and must be filed with the Commission to be effective.

(5) *Contests of protests.* A protest filed under paragraph (h)(4) of this section must:

(i) Specifically identify each contract that is protested;

(ii) Set forth the text of the contractual provisions which the protestant believes to be inconsistent with the conclusion that the contact authorizes the seller to collect the filed-for production-related costs, and the specific reasons why the protestant believes such inconsistency exists; and

(iii) Provide any other evidence which the protestant believes is relevant to the issue of the existance of contractual authorization to collect the production-related costs.

(6) *Protest procedure.* (i) The Commission will publish in the **Federal Register** a notice of a protest filed under paragraph (h)(4) of this section. The pipeline-purchaser or third-party must serve each first seller with any protest at the same time the protest is submitted to the Commission. Pipeline-purchasers will provide the names and addresses of such first sellers to any third-parties that must make service under this section upon request.

(ii) The Commission will transmit the pipeline protest filing, the protest filed under paragraph (h)(4) of this section, and the list of first sellers identified as *not* having contractual authority to collect production-related costs, to the Chief Administrative Law Judge.

(iii) Any third-party, staff, or pipeline protest will be set for hearing unless summary disposition is made of the protest.

(iv) Upon receipt by the Commission of any third-party or staff protest, or pipeline protest of first sellers identified as not having contractual authority to collect production-related costs referred to in this section, the seller in the first sale will be joined as a party.

(7) *Authority of Chief Administrative Law Judge.* In the case of any proceeding relating to a third party, staff, or pipeline protest filed under this section, the Chief Administrative Law Judge is authorized to issue such procedural orders, including orders setting matters for hearing, severing and consolidating proceedings, and certifying questions to the Commission, as he determines necessary or appropriate for the expeditious consideration of such portests. The Chief Administrative Law Judge may, by such order, authorize the Administrative Law Judge to whom a third-party protest or a pipeline's protest is assigned to issue similar procedural orders relating to that protest.

(8) *Rules of practice and procedure.* Part 385 of this chapter (relating to rules of practice) will apply to such third party, staff, and pipeline protest proceedings except to the extent otherwise provided by a procedural order issued by the Chief or Presiding Administrative Law Judge under paragraph (h)(7) of this section. Section 385.715 of this chapter will apply to any procedural order issued under paragraph (h)(7) of this section.

Appendix

Note.—This Appendix Will Not Appear In The Code of Federal Regulations

Initial Comments in Docket No. RM86–7–000

Timely-Filed

1. ANR Pipeline Company and Colorado Interstate Gas Company (ANR and CIG).
2. Associated Gas Distributors and Department of Public Service of the State of New York (AGD and New York).
3. Bass Enterprises Production Co. and Samson Resources Company (Bass and Samson).
4. CNG Producing Company (CNG).
5. Columbia Gas Transmission Corporation (Columbia).
6. El Paso Natural Gas Company (El Paso).
7. Indicated Producers.[1]
8. Mountain Fuel Resources, Inc. (Mountain Fuel).
9. Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Panhandle and Trunkline).
10. Phillips Petroleum Company and Phillips 66 Natural Gas Company (Phillips).[2]
11. Pogo Producing Company (Pogo).
12. Producer Associations.[3]
13. Southern California Gas Company (SoCal).
14. Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee).
15. Transcontinental Gas Pipe Line Corporation (Transco).
16. United Gas Pipe Line Company and Natural Gas Pipeline Company of America (United and Natural).

Late-Filed.[4]

17. Diamond Shamrock Corporation (adopting Initial Comments of Indicated Producers).

[FR Doc. 87–13082 Filed 6–8–87; 8:45 am]

BILLING CODE 6717–01–M

[1] Comprised of: Phillips Petroleum Company, Phillips 66 Natural Gas Company, Amerada Hess Corporation, Arco Oil and Gas Company, Ashland Exploration, Inc., BHP Petroleum, Inc., Chevron U.S.A., Inc., Cities Service Oil and Gas Corporation, Conoco Inc., Exxon Corporation, Kerr-McGee Corporation, Marathon Oil Company, Mitchell Energy Corp., Mobil Oil Corporation, Mobil Oil Exploration & Producing Southeast Inc., Mobil Producing Texas & New Mexico Inc., Mobil Exploration and Producing North America Inc., Pennzoil Company, Pennzoil Producing Co., Pennzoil Oil & Gas, Inc., Shell Oil Company, Sun Exploration and Production Company, Tenneco Oil Company, Texaco Inc., and Union Oil of California.

[2] Supplemental Initial Comments, as corrected September 12, 1986.

[3] Comprised of: Independent Petroleum Association of America, Panhandle Producers and Royalty Owners Association, Independent Petroleum Association of Mountain States, and Independent Petroleum Association of New Mexico.

[4] Since no person will be prejudiced thereby, the motion to file comments out-of-time is granted.

18 CFR Parts 270 and 284

[Docket Nos. RM86–3–069—077; Order No. 451–B]

Ceiling Prices; Old Gas Pricing Structure

Issued June 3, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting Rehearing in Part, Denying Rehearing in Part, Clarifying Final Rule, and Denying Stay Request.

SUMMARY: The Federal Energy Regulatory Commission is granting in part and denying in part rehearing of, and clarifying Order No. 451–A which amended Order No. 451. The final rule adopted in those orders established a new alternative ceiling price for old gas priced under sections 104 and 106 of the Natural Gas Policy Act of 1978. The final rule also established a "good faith negotiation rule" with which producers must comply before collecting a higher price under an existing contract, absent voluntary renegotiation of the contract. In addition, the final rule provided blanket transportation certificates to non-Order No. 436 interstate pipelines which formerly purchased, or provided upstream transportation of, gas released under the good faith negotiation rule in order to facilitate marketing of that gas to a new purchaser. On rehearing of Order No. 451–A, the Commission amends the regulations implementing the good faith negotiation rule to clarify the effect of assignments on the parties' rights under that rule and to permit first sellers and purchasers to mutually agree to shorten the notice which must be given before sales or purchases are abandoned or terminated. The Commission also grants intrastate pipelines a limited jurisdiction certificate to perform the same transportation which Order Nos. 451–A and 451–B authorize or require non-Order No. 436 interstate pipelines to perform. Finally, the Commission denies the request of Williams Natural Gas Company for a stay of Order Nos. 451 and 451–A.

EFFECTIVE DATE: The amendments to the Commission's regulations adopted in this order shall become effective on June 3, 1987 except that §§ 284.225(f)(4) and (g) and 284.226(d) shall not become effective until July 9, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., (202) 357–8308, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North

Capital Street, NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing in Part, Denying Rehearing in Part, Clarifying Final Rule, and Denying Stay Request

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

On December 15, 1986, the Commission issued Order No. 451–A[1] amending the final rule adopted in Order No. 451.[2] That final rule modified the price structure of old natural gas and established regulations governing implementation of the revised price structure. The Commission has received three timely applications for rehearing or clarification of Order No. 451–A, and five requests for reconsideration.[3] This order grants in part and denies in part rehearing of, and clarifies, Order No. 451–A. It also denies a request by Williams Natural Gas Co. that the Commission stay Order Nos. 451 and 451–A pending judicial review.

II. Background

In Order No. 451, the Commission established a new, alternative ceiling price for old gas priced under sections 104 and 106 of the Natural Gas Policy Act of 1978 (NGPA).[4] That ceiling price is equal to the existing ceiling price for post-1974 old gas. In order to prevent indefinite price escalation clauses from automatically raising prices to the new ceiling price regardless of the market price, and in order to provide balanced negotiating rights among the parties, the Commission required that parties to existing contracts, who do not voluntarily negotiate a new or amended contract price, comply with a "good faith negotiation rule" before collecting higher prices. That rule establishes a three-step procedure by which contracts are placed on the bargaining table.

In step 1, a producer may request the purchaser to nominate a new price for any old gas sold under existing contracts which authorize a higher price. In step 2, the purchaser may request that the producer nominate a new price for any old or other gas sold by the producer under contracts covered by the producer's request. In addition, the purchaser may request the producer to nominate a new price for any gas sold by the producer under any other existing contract between the parties which contains some old gas. In step 3, the producer may request the purchaser to nominate a new price for its old gas in the contracts brought to the negotiating table by the purchaser in step 2. If the parties agree to a new price, sales continue under the existing contract at the agreed upon price. If the parties do not agree, the party that requested nomination of a price may cease sales or purchases of the gas covered by the nomination request and abandonment is deemed granted. Whenever gas previously sold to a non-Order No. 436 pipeline is eligible for release under the good faith negotiation rule, the producer must give the pipeline's firm sales customers a right of first refusal before selling released jurisdictional gas to a third party. Non-Order No. 436 interstate pipelines which formerly purchased released gas must transport that gas to their existing customers or to interconnecting pipelines. The Commission granted a blanket certificate for the performance of such transportation.

In Order No. 451–A, the Commission generally denied rehearing of Order No. 451. However, the Commission did modify the regulations governing the rates charged by non-Order No. 436 pipelines for transportation performed under the rule in order to assure that those rates are the same as those for comparable transportation under Order No. 436. The Commission also authorized non-Order No. 436 interstate pipelines, which provided transportation of released gas upstream of the releasing pipeline immediately before the release, to continue the transportation on behalf of any shipper. Finally, the Commission clarified the operation of the good faith negotiation rule in various respects and made several minor modifications in the regulations implementing that rule. The applications for rehearing of Order No. 451–A raise a number of issues concerning the good faith negotiation rule and the transportation provisions of the final rule as modified in Order No. 451–A.

III. Discussion

1. The first, and perhaps most significant issue raised, concerns the operation of the good faith negotiation rule when a producer has assigned gas to another producer subject to an existing sales contract. On rehearing of Order No. 451, some rehearing applicants expressed concern that producers might seek to avoid renegotiation of their new gas in multi-vintage contracts in step 2 of the nominating process by transferring or assigning their old or their new gas to another entity so that all new and old gas is in separate contracts. The Commission stated that this was not a significant danger under the rule as adopted. As explained in the Order No. 451–A preamble:

> "Mere assignment to another corporate entity of old or new gas covered by a multi-vintage contract without amendment of the sales contract itself could not insulate the new gas from renegotiation in step 2. This is because the original owner of the gas would still appear on the contract with the purchaser as the seller of that gas. The purchaser is entitled to obtain renegotiation in step 2 of all gas sold under the contract as it was on July 18, 1986, by the seller regardless of whether the seller claims someone else owns the gas." [5]

IPAA, Texaco, Conoco, and Arco assert that this statement is inconsistent with state law. Once an assignment has occurred, the assignor has no further legal authority to negotiate on behalf of the assignee. Thus, if a producer assigned its new gas to another producer and thereafter requested the purchaser to nominate a new price for its old gas, any request by the purchaser in step 2 that the assignor nominate a price for the new gas would be futile since that producer no longer has legal authority to negotiate the price of that gas.

IPAA suggests that, consistent with state law, the Commission modify the definition of "first seller" and "party to a contract," set forth in § 270.201(a)(2)(iii), to include only persons having a direct contractual relationship with the purchaser as of the date a nomination request is made. The effect of such a provision, in the absence

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[1] 51 FR 46762 (December 24, 1986).

[2] 51 FR 22168 (June 18, 1986).

[3] Meridian Oil, RM86–3–069, January 14, 1987; Independent Petroleum Association of America (IPAA), RM86–3–070, January 14, 1987; General Service Customer Group (GSC), RM86–3–071, January 14, 1987. On April 13, 1987 Williams Natural Gas Company filed a motion for reconsideration of Order No. 451–A. Panhandle Eastern Pipe Line Co. (Panhandle) and Trunkline Gas Co. (Trunkline) filed a joint motion for reconsideration on April 23, 1987.

On February 5, 9, and 19, 1987, respectfully, Texaco, Inc., Arco Oil and Gas Co., and Conoco, Inc., filed "comments" on IPAA's request for rehearing generally supporting that request on the assignment issue. On March 16, 1987 Columbia Gas Transmission Corp. (Columbia) filed comments opposing IPAA's request for rehearing. On March 31, 1987 Amoco Production Company (Amoco) filed a response to Columbia's filing.

The Commission's procedural regulations do not permit answers to rehearing requests. 18 CFR 385.713(d)(1) (1986). However, the Commission will treat Texaco's, Arco's, and Conoco's comments as requests for reconsideration of Order No. 451–A, since those comments seek changes in Order No. 451–A. Columbia's comments, which do not seek changes in Order No. 451–A, are rejected and will not be considered in this order. It follows that Amoco's response to Columbia's comments must also be rejected.

[4] 15 U.S.C 3314 and 3316 (1982).

[5] 51 FR at 46795–796.

of any other change in the regulations implementing the good faith negotiation rule, would be that when an assignor or assignee makes a nomination request in step 1, the purchaser in step 2 could only seek negotiation of gas currently sold it by that assignor or assignee. This is because the regulations currently permit the purchaser to seek renegotiation in step 2 only of gas sold it by the "first seller" who made the nomination request in step 1.

Texaco, Conoco, and Arco agree with IPAA that a purchaser should be permitted in step 2 to seek renegotiation only of gas currently sold it by the assignor or assignee initiating good faith negotiation at least where the assignor and assignee are not affiliated. They state that there is little danger that producers will significantly circumvent purchasers' step 2 rights through assignment except possibly where producers are affiliated. Too many other considerations are involved when producers assign gas leases for them to manipulate such assignments for purposes of circumvention. Texaco also states that producers lack any incentive to try to circumvent the purchasers' step 2 rights, since, as the Commission stated in Order No. 451, the price of high-cost new gas will be forced downward as a result of higher prices for old gas even apart from the purchaser's rights in step 2.

Furthermore, Texaco, Conoco, and Arco contend that permitting the purchaser to renegotiate both the assignor's and assignee's multi-vintage gas when only one of them initiates good faith negotiation could be unfair to some producers. For example, an assignor who assigned old gas in one contract for legitimate business reasons could find all its multi-vintage contracts subject to good faith negotiation solely because of the actions of the assignee, even though the assignor desired to forego good faith negotiation.[6] Texaco states that, in order to avoid this possibility, it has begun requiring persons to whom it makes assignments to waive any rights to initiate good faith negotiation with respect to the assigned gas as a condition of the assignment. While Texaco, Conoco, and Arco agree with IPAA that a purchaser in step 2 should be limited to seeking renegotiation only of gas currently sold it by the assignor or assignee initiating good faith negotiation, they contend that that result can be achieved under the existing regulations and that there is no need for the amendment suggested by IPAA. They also state that, if the Commission desires to prevent circumvention by affiliates, it should adopt a regulation addressing that specific problem.

The Commission agrees with Texaco that, over the long term, any attempt through an assignment to insulate high-cost gas from renegotiation downward is likely to prove futile. As discussed in detail in Order No. 451,[7] the Commission expects new gas prices to be renegotiated downward as a result of the market forces released under this rule, apart from the rights granted purchasers in step 2. However, the Commission nevertheless found the purchaser's step 2 rights necessary to assure that in the short term there is no lag between the producer's obtaining a higher price for old gas and the purchaser's obtaining lower prices for new gas sold in multi-vintage contracts.[8] The Commission desires to minimize any possible circumvention of this assurance by producers through assignments. The danger of circumvention is not limited to assignments among affiliates, as suggested by Texaco, Conoco, and Arco. For example, a producer who owned mostly new gas and therefore did not desire to initiate good faith negotiation might sell its old gas in a multi-vintage contract to a second, unaffiliated producer for a price based upon the value of the gas when sold subject to the alternative ceiling price. When the second producer initiated good faith negotiation for the assigned gas, the purchaser would not be able to make a nomination request in step 2 for the unassigned new gas. Accordingly, the Commission does not adopt the rehearing applicants' proposal.

However, the Commission is sympathetic with the concern of Texaco, Conoco, and Arco that permitting the purchaser in step 2 to make nomination requests with respect to all gas which would have been eligible for renegotiation in the absence of the assignment—the approach suggested in the Order No. 451–A preamble—could be unfair to some producers. As stated by the rehearing applicants, only the assignee has power to contract with respect to the assigned gas, just as only the assignor has power to contract with respect to unassigned gas.[9] Therefore, in order to implement the approach suggested in the Order No. 451–A preamble, the purchaser would have to be given the right, when an assignor or its assignee initiates good faith negotiation, to request the other to nominate a price for any gas which would have been subject to good faith negotiation in the absence of the assignment. This would mean that an assignor or assignee who did not desire to engage in good faith negotiation could nevertheless be drawn into such negotiation as a result of the nomination request of the other. This could have a particularly adverse effect on assignors, all of whose multi-vintage contracts would become subject to good faith negotiation as a result of a nomination request by the assignee.

For these reasons, the Commission is modifying Order No. 451–A with respect to assignments (or other transfers that in substance yield the same effect) on or after the issuance of this order as follows. A producer who validly assigns gas subject to a contract existing on July 18, 1986 which included old gas will be ineligible to initiate good faith negotiation for any gas it sold to the purchaser unless the purchaser in step 2 can renegotiate all the gas which would have been subject to renegotiation in the absence of the assignment. The same rule will also apply to the assignee; however, its ineligibility to initiate good faith negotiation will be limited to the assigned gas.[10] The purchaser's ability to renegotiate the gas which would have been subject to renegotiation in the absence of the assignment could arise, for example, through an agreement by the assignor or assignee to permit renegotiation of its gas if the other initiates good faith negotiation or through the assignment itself under state law. This rule will protect purchasers from circumvention of their step 2 rights as a result of assignments after the issuance of this order, without requiring any producers involuntarily to renegotiate their gas except where state law permits purchasers to require such renegotiation.

The Commission will not apply the above described rule to assignments before the issuance of this order. In its

[6] Similarly, the gas assigned to the assignee could likewise become subject to renegotiation solely because the assignor initiated good faith negotiation.

[7] 51 FR at 20196–198.

[8] Order No. 451–A, 51 FR at 46788–789.

[9] In general when a producer assigns gas to another producer, the assignee succeeds to all the rights and obligations of the assignor with respect to the assigned gas. *See* 4 Williams, Oil & Gas Law § 735 (1985).

[10] The assignee's ineligibility need not extend to the gas it sells under its own contracts with the purchaser in order to prevent circumvention of the purchaser's step 2 rights. If there had been no assignment and the assignor had requested the purchaser to nominate a price for the assigned gas, the purchaser would not have been entitled in step 2 to reach the assignee's gas. The purchaser could only reach that gas if the assignee makes a nomination request for some of its gas, and in such circumstances the purchaser can reach that gas in step 2 after the assignment as well as before.

interim order on rehearing issued July 18, 1986 the Commission stated that it would only change its regulations governing eligibility to initiate good faith negotiation prospectively. Those regulations, as in effect before issuance of this order, permitted producers to make assignments without potential loss of eligibility to initiate good faith negotiation.[11] It would be unfair to deprive a producer of its eligibility for good faith negotiation because of an assignment made when the Commission had given no notice that assignments could cause such a loss of eligibility. However, as stated above, the Commission believes that the rule suggested by the Order No. 451–A preamble is also unfair. Accordingly, the Commission has determined not to apply that rule to assignments before the issuance of this order either. Rather, this order provides that, when gas in an existing contract including old gas has been assigned before the issuance of this order, the purchaser in step 2 may seek renegotiation of any multi-vintage or old gas currently sold by the assignor or assignee initiating good faith negotiation, but not any other gas. Accordingly, assigned gas shall be subject to renegotiation in step 2 only when the assignee initiates good faith negotiation for old gas in any of its contracts with the purchaser. Similarly, the unassigned gas will be subject to renegotiation in step 2 only when the assignor initiated good faith negotiation.[12]

Furthermore, the Commisson believes that any impact on purchasers as a result of some above-market gas not being subject to renegotiation in step 2 through application of the above described rule will often be counterbalanced by other high-cost gas becoming subject to renegotiation which otherwise would not have been. For example, a producer who does not intend to initiate good faith negotiation may, for legitimate business reasons, have assigned high-cost gas to another producer who owns a large amount of old gas and will initiate good faith negotiation. As a result the purchaser will now have an opportunity to renegotiate that gas in step 2 which it would not have had without the assignment.[13] Finally, even when high-cost gas is not subject to renegotiation in step 2 as a result of an assignment before issuance of this order, the competitive forces in the natural gas market released by this rule should enable the purchaser to renegotiate that gas downward. The Commission concludes that the rule adopted here governing assignments before the date of this order provides the best method of handling such assignments, since these rules should not result in significant circumvention of the purchaser's step 2 rights and the identified alternatives as discussed could have an unfair impact.

The Commission is also amending the regulations governing good faith negotiation so as to authorize the purchaser, when gas is assigned after the issuance of this order and the assignor or assignee is eligible to initiate good faith negotiation,[14] to renegotiate in step 2 all gas which would have been subject to renegotiation in the absence of the assignment. This amendment is necessary, since the current regulations do not specifically authorize the purchaser, in any circumstances when an assignee or assignor initiates good faith negotiation, to request the other to nominate a price for its gas. When a producer who assigned gas after the issuance of this order initiates good faith negotiation for gas sold under the contract which includes the assigned gas or sold under another contract, the amended regulations authorize the purchaser in step 2 to request the assigneee to nominate a new price for the assigned gas. The purchaser may also request the assignor to nominate a new price for any unassigned gas in the assignor's multi-vintage contracts with the purchaser which contain some old gas. If the assignee initiates good faith negotiation, the purchaser may request in step 2 that the assignor nominate a new price for any unassigned gas in any of its multi-vintage contracts with the purchase. The purchaser also may request that the assignee nominate a new price for the assigned gas. However, the purchaser may not request the assignee to nominate a new price for any other gas sold under contracts between the purchaser and the assignee. The purchaser could not have reached that gas if the assignment had never occurred and the assignor had initiated good faith negotiation.[15] These procedures are designed only to give the purchaser the same rights it would have had in the absence of an assignment, not to expand those rights.

While in the circumstances described above, when an assignor or assignee initiates good faith negotiation, the purchaser may make nomination requests to the other, the assignor and assignee are still considered separate first sellers and parties to the contract for purposes of the good faith negotiation rule. Thus, when the purchaser makes nomination requests to both, each must nominate a price for its gas and the purchaser may accept the nomination of one and reject the nomination of the other as it chooses although, consistent with the rules governing good faith negotiation generally, the purchaser cannot partially accept or reject the nomination of a particular assignor or assignee. Furthermore, if an assignor or assignee initiates good faith negotiation and the purchaser does not exercise its right to request the other to nominate a price, then the negotiation between the party initiating good faith negotiation and the purchaser will not affect the other's right subsequently to initiate good faith negotiation. An assignor or assignee loses its right subsequently to initiate good faith negotiation only if its gas is placed on the bargaining table.[16] Of course, if the purchaser does request the other to nominate a price, the assignor or assignee must make any nomination request it desires in step 3. This is consistent with the general rule governing signatory working interest owners' loss of right to initiate good faith negotiation. *See* Order No. 451–A, 51 FR at 46801.

2. Williams Natural Gas Company (Williams) requests that the Commission expand purchasers' step 2 rights to permit purchasers to seek lower prices for new gas covered by any contract between the parties, regardless of whether that contract includes old gas. Williams states that this change in Order Nos. 451 and 451–A is necessary because of the decision of the Tenth Circuit Court of Appeals in *Martin Exploration Management Co. v.*

[11] *See* Order No. 451–A, 51 FR at 46796, in which the Commission raised the possibility of loss of eligibility for good faith negotiation as a result of an assignment only if the producer and the purchaser actually amended the sales contract to name the assignee as a seller.

[12] This result is reached through application of the existing regulations governing the purchaser's step 2 rights. Under § 270.201(b)(2) the purchaser may make a nomination request in step 2 only to the "first seller" initiating good faith negotiation. That "first seller" under § 270.201(b)(2) is the assignor or assignee initiating good faith negotiation.

[13] It should be observed that no assignment after July 18, 1986 of the old or new gas in a multi-vintage contract can alter the fact that the new gas is sold under a multi-vintage contract including the sale of old gas. Pursuant to § 270.201(a)(2)(ii)(B), a contract includes the sale of old gas if on July 18, 1986 it encompassed the sale of such gas.

[14] As discussed above the assignor or assignee would be eligible to initiate good faith negotiation if the other agrees that the purchaser may renegotiate its gas in step 2, state law permits the purchaser to do so, or for some other reason the purchaser must be given such a right.

[15] For the same reasons, if the assignee requests the purchaser to nominate a price for gas sold under its own contracts with the purchaser, the purchaser may not request the assignee in step 2 to nominate a price for the assigned gas.

[16] See 18 CFR 270.201(a)(4).

FERC.[17] In that case, the court reversed the Commission's holding in Order No. 406 [18] that, when gas has been determined to qualify for both a deregulated gas category and a regulated category, the gas is deemed deregulated. Among the categories of gas which were deemed price-deregulated under Order No. 406 was certain gas qualifying under NGPA section 107(c)(5) as new tight formation gas. Order No. 406 thus permitted many purchasers to pay less than the relatively high section 107(c)(5) ceiling price for that gas through, for example, contract clauses providing for price redetermination upon deregulation. Williams alleges that the reversal of Order No. 406 means that producers with indefinite price escalation clauses will now again be eligible to receive the section 107(c)(5) ceiling price, currently $6.36. This could significantly increase pipelines' cost of gas. Williams states that expansion of purchasers' step 2 renegotiation rights will give pipelines an opportunity to mitigate the effect of *Martin*.

The Commission does not adopt Williams' proposal. The reasons the Commission gave in Order No. 451–A for refusing to permit purchasers in step 2 to renegotiate new gas not in multi-vintage contracts are as valid after *Martin* as before. As the Commission stated in Order No. 451–A, the competitive forces in the natural gas market, which will be strengthened by the increased production and more accurate price signals resulting from this will over time force down new gas prices wholly apart from the good faith rule, negotiation rule.[19] Thus, it is unnecessary to expand the purchasers' step 2 rights in order to enable them to bring down the price of new gas, including section 107(c)(5) gas. Furthermore, permitting the purchaser to renegotiate all new gas would increase the potential cost to many producers of initiating good faith negotiation, with the result that fewer producers would do so. This would seriously impede achievement of the Commission's goal of market responsive prices for old gas so as to avoid premature abandonment of that gas. Therefore, the Commission continues to believe that a proper balance between the need for higher prices for old gas and fairness to purchasers is achieved by permitting purchasers to renegotiate in step 2 only new gas sold in multi-vintage contracts. This assures that there is no lag between the producer's obtaining a higher price for old gas and the purchaser's obtaining a lower price for new gas sold under multi-vintage contracts, thereby avoiding disruption of the mutuality of consideration in multi-vintage contracts in which all terms are interrelated. At the same time, however, it avoids making good faith negotiation so costly that few producers initiate it.

3. Meridian observes that some multi-vintage contracts may provide no authority for a higher price for the old gas and yet also contain high-priced new gas. An example would be a contract containing only minimum rate old gas and deregulated new gas. Meridian requests clarification whether the producer may request a price nomination for the old gas in such a contract in step 3, if the purchaser requests a price nomination for the new gas in step 2. The situation posed by Meridian cannot arise because the purchaser could not make a nomination request with respect to the contract in question in step 2. Section 270.201(b)(2) only authorizes the purchaser to make nomination requests in step 2 with respect to "any existing contract with the purchaser that includes the sale of any old gas." Section 270.201(a)(2)(ii) (A) defines "existing contract" as a contract in effect on July 18, 1986 "that . . . provides authority for the first seller to collect a higher price upon establishment by the Commission of a higher maximum lawful price." Thus, the only multi-vintage contracts which the purchaser in step 2 can bring to the bargaining table are those which permit a higher price for at least some of the old gas in the contract. Of course, where the purchaser in step 2 requests the producer to nominate a price for new gas in a multi-vintage contract providing authority for a higher price for some but not all of the old gas in the contract, the producer in step 3 could only request the purchaser to nominate a price for the old gas for which there was authority for a higher price.

4. A producer must enter into a contract to sell to a third party and give the purchaser 30-days notice before terminating sales under the good faith negotiation rule. IPAA requests that the Commission clarify that, where a producer must comply with the Order No. 451 right of first refusal, it may give the 30-days notice to the pipeline as soon as it has obtained an offer substantially accepted in principle from the non-firm sales customer, rather than waiting until it has executed a contract with either the non-firm sales customer or a firm sales customer exercising its right of first refusal. Permitting the 30-day notice period to run concurrently with the presentation of a third-party offer to the pipeline's firm sales customer allegedly would further the policy objectives of Order No. 451 by permitting released or abandoned gas to be sold to alternative purchasers at market-responsive prices more quickly. It would also make third parties more willing to purchase released gas since deliveries could start more quickly after the agreement in principle with the producer. Finally, because some pipelines require transportation to begin within a certain period of the signing of the transportation agreement, arrangement of transportation to the new purchaser would be easier.

The Commission rejects IPAA's proposed clarification. In Order No. 451–A, the Commission clearly stated its intent that the producer must execute a contract with the new purchaser before giving the existing purchaser the 30-days notice of terminaton of sales.[20] When the producer must give the firm sales customers a right of first refusal of an offer accepted by a non-firm sales customer, no contract can be executed until after the offer has been presented to the firm sales customers. Accordingly, the 30-days notice cannot be given until after the right of first refusal has been complied with. Without the requirement of an executed contract before the producer gives the 30-days notice, there would be a possibility that upon completion of the 30-day notice period the producer still would not have executed a contract to sell the gas to another purchaser and thus would not qualify for the abandonment granted under the good faith negotiation rule.[21] It would be difficult for the purchaser to contract to purchase replacement supplies from another producer if it could not be certain that upon completion of the 30-day notice period sales by the first producer would be abandoned. Avoiding any uncertainty

[17] Case Nos. 84–2756 *et al.* decided March 9, 1987.

[18] Deregulation and Other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act, 49 FR 46874 (Nov. 29, 1984).

[19] 51 FR at 46790–791.

[20] 51 FR at 46784.

[21] Even if the producer had presented a third-party offer to firm sales customers concurrently with giving the 30-days notice so that the 20 day period for responding to the third party offer would expire before the 30-days notice, there could be no certainty that a sales conract would actually be executed with a new purchaser before the end of the 30-day notice period. If all the firm sales customers rejected the third-party offer, the deal between the producer and the non-firm sales customer might still fall through, requiring the producer to start all over again looking for a new purchaser and comply with the right of first refusal a second time if the next potential purchaser is a non-firm sales customer. If more than one firm sales customer accepted the offer, it might take beyond the 30-days notice period for the producer to choose to which one to sell and execute a contract.

over whether the abandonment will occur at the end of the 30-day notice period justifies any additional delay in the commencement of sales to the new purchaser. Such additional delay would in no event be more than the 30-day notice period. With regard to IPAA's concern about pipeline requirements that transportation service begin within a certain period after it is arranged, the Commission observes that operational conditions imposed on any transportation service required by Order No. 451 must be reasonable and not unduly discriminatory or preferential. Such operational conditions may not be imposed in order to avoid the Order No. 451 transportation obligation.

5. Purchasers must give the first seller 60-days notice before abandoning or terminating purchases under the good faith negotiation rule. Panhandle and Trunkline request that the Commission provide that the first seller and purchaser may mutually agree to shorten this 60-day notice period. The Commission established the 60-day notice period in order to give the first seller a reasonable opportunity to arrange sales to an alternative purchaser.[22] Since the 60-day notice period is for the protection of the first seller, there appears no reason not to permit the first seller to waive that notice through a mutual agreement with the purchaser. In additional, such a shortening of the notice period would permit the Commission's goal of more market-responsive pricing to be achieved more quickly for the gas in question. The Commission believes that the same reasoning also supports permitting the first seller to abandon or terminate sales under the good faith negotiation rule upon less than the required 30-days notice when the parties mutually so agree. Accordingly, the Commission is modifying its regulations to permit the parties to mutually agree to shorten the notice period for termination or abandonment of both sales and purchases.

6. In Order No. 451–A, the Commission stated that a firm sales customer's Order No. 451 right of first refusal and a non-Order No. 436 pipeline's NGPA section 315(b) right to a bona fide offer and right of first refusal [23] could never arise simultaneously with respect to the same gas. The Order No. 451 right of first refusal only applies to non-jurisdictional gas such as that covered by section 315(b) if it is packaged with jurisdictional gas. The Commission stated that a producer may not package gas covered by section 315(b) with other gas when giving the original purchaser its section 315(b) rights. Accordingly, the gas covered by section 315(b) will never be available for packaging with released jurisdictional gas for purposes of the Order No. 451 right of first refusal. IPAA questions whether the Commission's section 315(b) regulations prohibit the packaging of section 315(b) gas with other gas. Accordingly, it suggests that under the Commission's current regulations producers may be required with respect to the same gas both to give the original purchaser its section 315(b) rights and to give the firm sales customers a right of first refusal under Order No. 451. It proposes that the Commission solve this problem by amending its section 315(b) regulations to provide that a producer's compliance with the Order No. 451 right of first refusal extinguishes the original purchaser's section 315(b) rights.

The Commission rejects IPAA's proposal. First, that proposal would violate section 315(b) by depriving the original purchaser of its right under that section to receive a bona fide offer and right of first refusal. Second, IPAA is incorrect in suggesting that a producer may package gas covered by section 315(b) with other gas when giving the original purchaser its section 315(b) rights. Section 315(b) requires that the producer give the original purchaser a bona fide offer and right of first refusal with respect to the gas covered by that section. Inclusion of other gas in the offer presented to the original purchaser would mean that the offer was not an offer to continue sales of the gas covered by section 315(b), but an offer only to sell a larger package of gas. Furthermore, permitting the producer to include other gas in the offer would allow it to circumvent the original purchaser's section 315(b) rights by including a large amount of other gas for which the purchaser had no need. As explained in Order No. 451–A,[24] since the non-jurisdictional gas covered by section 315 cannot be packaged with the jurisdictional gas covered by the Order No. 451 right of first refusal for purposes of giving the original purchaser its section 315(b) rights, there can be no overlap between the section 315(b) and the Order No. 451 rights of first refusal.

7. NGPA section 315(a) requires the Commission to prescribe a rule providing that contracts for the first sale of Outer Continental Shelf gas qualifying under NGPA sections 102(b) or 107(c)(1)–(4) be for a duration of not less than 15 years. IPAA requests that the Commission modify 18 CFR 277.101, adopted pursuant to section 315(a), so as to exclude from the 15 year duration requirement contracts for the sale of the relevant Outer Continental Shelf gas where that gas has been released under the good faith negotiation rule. Adoption of the proposed modification would violate section 315(a)'s requirement that contracts for the sale of all section 102(b) or 107(c)(1)–(4) Outer Continental Shelf gas be for a term of at least 15 years. Accordingly, the Commission cannot modidy its regulations as proposed.

8. IPAA requests that the Commission modify the non-discriminatory access provision imposed on intrastate pipelines performing transportation under NGPA section 311(a)(2) by Order No. 436 [25] so as to permit intrastate pipelines to transport gas released under the good faith negotiation rule without being subject to the nondiscriminatory access provision. IPAA argues that such a modification is necessary to permit intrastate pipelines unwilling to become access pipelines to transport gas released under the good faith negotiation rule and would be analogous to the transportation authorizations provided non-Order No. 436 interstate pipelines in Order Nos. 451 and 451–A.

The Commission agrees that, to the extent intrastate pipelines require Commission authorization to transport gas, those pipelines should be authorized to perform transportation analogous to that which Order Nos. 451 and 451–A authorize or require non-Order No. 436 interstate pipelines to perform. The same policy considerations supporting the transportation authorization for non-Order No. 436 interstate pipelines also apply in the case of intrastate pipelines. In order for the potential benefits of this rule to be realized in terms of both supply and price response, producers must be able to market released gas. Some producer's ability to market released gas could be hindered when an intrastate pipeline unwilling to become subject to the non-discriminatory access provisions of Order No. 436 refuses to perform section

[22] Order No. 451–A, 51 FR at 46799.

[23] Section 315(b) requires that when a contract for the sale of NGPA section 102(c), 103(c), or 107(c)(1)–(4) gas which was subject to the Commission's Natural Gas Act (NGA) jurisdiction on the day before enactment of the NGPA expires or is terminated, the seller must give the existing purchaser a bona fide offer and right of first refusal before selling that gas to a third party.

[24] 51 FR at 46805.

[25] 18 CFR 284.9(b). Under section 311(a)(2), the Commission may authorize intrastate pipelines to transport gas on behalf of interstate pipelines or local distribution companies served by interstate pipelines.

311(a)(2) transportation. Accordingly, the Commission shall provide blanket "limited jurisdiction" section 7(c) certificates authorizing intrastate pipelines which either purchased, or provided upstream transportation of, released gas immediately before its release to transport that gas on behalf of either interstate pipelines or local distribution companies served by interstate pipelines. All transportation under these certificates shall be voluntary. As we stated in Order 451–A with respect to upstream interstate pipelines, any intrastate pipeline electing to provide transportation under this authorization must do so in a not unduly discriminatory manner. *See* 51 FR at 46809.

The rate charged by an intrastate pipeline for transportation of released gas which the pipeline purchased immediately before the gas release shall be determined pursuant to § 284.123(b). This assures that the rate shall be the same as if the transportation were provided under section 311(a)(2). The rate charged by an intrastate pipeline for upstream transportation of released gas shall be identical to the rate charged for the same service previously provided to the releasing pipeline.

8. The Order No. 451 transportation obligation and the Order No. 451 right of first refusal apply only to non-Order No. 436 interstate pipelines and the firm sales customers of such pipelines respectively. Order No. 451 defines non-Order No. 436 pipelines as pipelines not subject to the non-discriminatory access provisions of § 284.8(b) and § 284.9(b). Pipelines performing section 311 transportation on an interim basis [26] are subject to these non-discriminatory provisions [27] and accordingly are considered Order No. 436 pipelines for purposes of Order No. 451. GSC and IPAA assert that this means such pipelines could nullify their customers' ability to obtain alternative supplies through the Order No. 451 right of first refusal and transportation provisions by going through good faith negotiation while still an Order No. 436 pipeline performing interim section 311 transportation but thereafter ceasing the interim transportation. The pipeline could then refuse to transport any gas to the customers not purchased from the pipeline. GSC suggests that the Commission solve this problem by expanding the definition of non-Order No. 436 pipelines to include all pipelines who have not been granted and accepted an Order No. 436 blanket certificate under § 284.221 of the Commission's regulations. IPAA suggests alternatively that the Commission require that an Order No. 436 pipeline certify that it will remain such for at least 12 months. In the absence of such certification the Order No. 451 transportation obligation would apply to such pipelines.

The Commission refuses to modify Order No. 451's definition of non-Order No. 436 pipelines or to adopt IPAA's alternative suggestion. So long as a pipeline is subject to the non-discriminatory access provisions of Order No. 436, there is no reason to require it to transport gas under Order No. 451 or to give the pipeline's firm sales customers a right of first refusal. Transportation is already available under the non-discriminatory access provisions, thus permitting customers to purchase alternative supplies from any source and have that gas transported to them. It is true that pipelines may terminate the performance of interim section 311 transportation at any time and must do so when certain Order No. 436 filings have been processed. Nevertheless, the Commission does not believe that this fact will enable pipelines to prevent their customers from purchasing gas from alternative suppliers in the manner suggested by GSC and IPAA. Any pipeline terminating interim transportation that does not accept an Order No. 436 certificate or continue section 311 transportation [28] would be required under Order No. 451 to transport gas released under the good faith negotiation rule to its customers or interconnecting pipelines. This requirement would apply to all released gas regardless of whether the release occurred before or after the interim transportation ceased. In addition, the firm sales customers of such a pipeline would be entitled to a right of first refusal as to all released gas not already sold to a third party. With all interim transportation authority scheduled to end upon the processing of certain Order No. 436 filings, it is likely that a substantial portion of the gas ultimately released under the good faith negotiation rule will not be released until after the termination of interim transportation and would thus remain available for the firm sales customers' right of first refusal. This is particularly true in light of the fact that pipelines have no control over the timing of good faith negotiation. Initiation of good faith negotiation is in the sole discretion of the producer. It appears that many producers are delaying initiation of good faith negotiation while they seek voluntary negotiation or for other reasons. Finally, the Commission observes that although pipelines may terminate interim transportation, the Commission has stated that such termination must not be unduly discriminatory.[29]

10. In Order No. 451–A, the Commission held that a non-Order No. 436 pipeline's election to bid less than the highest price permitted under its contract necessarily includes an agreement to waive any full requirements or sole supplier clause which would prevent a firm sales customer from exercising its right of first refusal.[30] Otherwise, the right of first refusal granted such customers would be a nullity. GSC contends that the Commission should extend this waiver requirement to Order No. 436 pipelines. It observes that, in refusing to extend the right of first refusal to the customers of an Order No. 436 pipeline, the Commission stated that such customers have no need of the right of first refusal, since they can purchase any gas, whether or not previously sold to the pipeline or released under the good faith negotiation rule, and obtain transportation from the Order No. 436 pipeline. However, GSC states that a full requirements clause may bind customers of Order No. 436 pipelines to purchase from the Order No. 436 pipeline, particularly where the pipeline is only performing interim transportation and is thus not subject to the contract demand reduction and conversion rights of § 284.10. GSC states that the Commission has not yet clarified this issue. Accordingly, GSC contends that a requirement that an Order No. 436 pipeline potentially losing gas under the good faith negotiation rule waive any full requirements clause is necessary to ensure that its customers may purchase gas from alternative suppliers.

The Commission will not extend the waiver requirement to Order No. 436 pipelines. Where a pipeline has accepted an Order No. 436 blanket

[26] The Commission has authorized certain pipelines to continue transportation under section 311 without becoming subject to the contract-demand reduction and conversion rights in § 284.10 until 30 days after the Commission issues the first order on rehearing of the individual pipeline's pending Order No. 436 settlement or blanket certificate. *See* Texas Eastern Gas Pipeline Co., 39 FERC ¶61,027 (1987).

[27] Texas Eastern Gas Pipeline Co., 33 FERC ¶61,159 (1985).

[28] Of course, if the pipeline does accept an Order No. 436 certificate or continues section 311 transportation, transportation would be available to its customers under Order No. 436 on a long term basis after interim transportation ends.

[29] Columbia Gas Transmission Corp., 33 FERC ¶61,158 (1985).

[30] 51 FR at 46811.

certificate or commences or continues a section 311 transaction after expiration of its interim transportation authorization and is therefore subject to the contract-demand reduction and conversion requirements of § 284.10, it must agree to modify any existing contract terms, such as a full requirements clause, which would prevent the customer's exercise of these options.[31] In such circumstances, therefore, a customer currently subject to a full requirements clause could nevertheless, through the exercise of its contract demand reduction and conversion rights, purchase gas from alternative suppliers and obtain transportation of that gas by the pipeline.[32]

Customers of Order No. 436 pipelines performing only interim transportation under section 311 would, it is true, have no contract demand reduction and conversion rights under § 284.10 and thus would be unable to purchase from another supplier unless the pipeline voluntarily agreed to modification of the full requirements clause. However, this situation will be only temporary. Interim transportation is scheduled to cease upon the processing of certain Order No. 436 filings. When that happens, pipelines must either: (1) Continue Order No. 436 transportation under a blanket certificate or section 311 which would require them to offer their customers the contract-demand reduction and conversion option in § 284.10 or (2) stop all Order No. 436 transportation, which would require them to waive any full requirements clauses preventing any firm sales customer from exercising the Order No. 451 right of first refusal. In either case, the customers could purchase gas from alternative suppliers. They could also obtain transportation, either under the Order No. 436 non-discriminatory access provisions or under the Order No. 451 transportation obligation. As discussed in the preceding section, the Commission expects that a substantial portion of the gas ultimately released under the good faith negotiation rule will not be released until after interim section 311 transportation ceases and will thus remain available for the Order No. 451 right of first refusal at that time. Accordingly, the Commission believes that the full requirements customers of pipelines currently performing interim section 311 transportation will have ample opportunity to purchase gas from alternative suppliers. Therefore, there is no need to further complicate the rule by requiring pipelines performing interim transportation to waive full requirements clauses.

11. IPAA states that some Order No. 436 pipelines might not provide transportation for amounts of gas below a particular minimum. A package of gas released under the good faith negotiation rule for which transportation is desired might be less than the applicable minimum. In such instances IPAA suggests that the Order No. 451 transportation provisions should apply even though the pipeline is an Order No. 436 pipeline. The Commission refuses to adopt this suggestion. Minimum volume conditions violate the non-discriminatory access provisions of Order No. 436 unless they can be justified as reasonable operating conditions.[33] In *Texas Eastern Transmission Corp.*, the Commission eliminated a minimum volume condition from Texas Eastern's Order No. 436 settlement on the ground that it was not necessary for operational reasons such as ensuring that the quantities of gas to be transported would be large enough to be metered.[34] Where an Order No. 436 pipeline's minimum volume condition is valid as a reasonable operating condition, that condition would likely also be a valid condition to any transportation under Order No. 451, since transportation under that order is also subject to reasonable operating conditions. *See* 18 CFR 284.225(f). Accordingly, if transportation pursuant to Order No. 436 is unavailable because of a minimum volume condition, transportation under Order No. 451 would also be unavailable. Therefore, no purpose would be served by applying the Order No. 451 transportation provisions to Order No. 436 pipelines in the situation described by IPAA.

12. Section 270.226(a) defines upstream pipelines for purposes of the upstream transportation authorization as interstate pipelines "authorized under a certificate of public convenience and necessity" to transport the gas, before its release, between the wellhead and the releasing pipeline. IPAA states that the requirement that the prior transportation have been pursuant to a certificate of public convenience and necessity appears to exclude from the upstream transportation authorization interstate pipelines previously performing transportation other than under a section 7(c) certificate. An example would be grandfathered section 311 transportation under § 284.105. IPAA requests that the Commission expand the upstream transportation authorization to cover such pipelines. In Order No. 451–A, the Commission stated that the upstream transportation authorization was intended to "serve the twin public interest goals of protecting existing firm customers *and* continuing the flow of gas to the market."[35] Continued upstream transportation by interstate pipelines serves these goals regardless of the authority under which it was previously performed. Accordingly, the Commission is amending § 270.226(a) to remove the requirement that the prior transportation have been pursuant to a certificate of public convenience and necessity.

13. Williams Natural Gas Co. (formerly Northwest Central Pipeline Corporation) has requested that the Commission stay Order Nos. 451 and 451–A pending judicial review. Williams asserts that the final rule adopted in those orders is illegal and will cause Williams irreparable harm. Thirteen producers have submitted a joint answer to Williams' request, opposing it.

The Commission rejected similar stay requests in Order No. 451–A, holding pursuant to the standard set forth in the Administrative Procedure Act, 5 U.S.C. 705 (1982), that justice did not require a stay.[36] For essentially the same reasons, the Commission rejects Williams' stay request. The Commission answered all arguments concerning the illegality of Order No. 451, including those now made by Williams, in detail in Order No. 451–A. Furthermore, Williams' contention that Order Nos. 451 and 451–A will cause it irreparable harm is speculative and unsubstantiated. There is no certainty that all, or even many, producers who sell gas to Williams will initiate good faith negotiation. Even if all do, Williams could, as stated in Order No. 451–A, offset over two-thirds of any old gas price increase to an estimated market price of $1.80/MMBtu by reducing its new gas WACOG to $1.68/MMBtu, its current all-gas WACOG. Furthermore, the Commission considers it unlikely old gas suppliers could sustain price increases in excess of Williams' $1.68/MMBtu old gas WACOG.[37] In any event, even if

[31] *See* Order No. 436–A, FERC Stats. and Regs., Regulations Preambles 1982–1985 ¶30,665 at 31,530, and Northwest Central Pipeline Co., 38 FERC ¶ 61,170 at 61,542–543 (1987).

[32] Of course, since the customer would no longer be a full requirements customer, it might no longer be entitled to purchase gas from the pipeline at the full requirements rate.

[33] Order No. 436, FERC Statutes and Regulations, Regulations Preambles 1982–1985 ¶ 30,665 at 31,495.

[34] 37 FERC ¶ 61,260 at 61,680 (1985).

[35] 51 FR at 46809 (emphasis in original).

[36] 51 FR at 46817.

[37] Williams' allegations of harm as a result of *Martin's* reversal of Order No. 406 are irrelevant to a consideration of whether Order Nos. 451 and 451–A should be stayed. Any harm, as alleged by

Continued

Williams does suffer economic damages, such damages are insufficient to constitute "irreparable harm." *See, e.g., Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985), citing *Virginia Petroleum Jobbers Ass'n.*, 259 F.2d 921, 925 (D.C. Cir. 1958). If the courts modify Order No. 451 on review, monetary adjustments may be made to make the parties whole. Finally, the long-term public interest benefits to consumers and the industry as a whole of the greater degree of market-responsiveness in the gas markets resulting from the rule outweigh any initial detriment to those few entities that benefited from a distorted market.

The amendments to the Commission's regulations adopted in this order on rehearing shall become effective upon issuance of this order except that §§ 284.225 (f)(4) and (g) and 284.226(d), involving reporting requirements, shall not become effective until July 9, 1987. In addition, the amendments to 18 CFR 270.201 shall not apply to negotiations under the good faith negotiation rule commenced by a nomination request under § 270.201(b)(1) made by the first seller before the issuance of this order.

The Administrative Procedure Act generally requires that a substantive rule be published "not less than 30 days before its effective date." 5 U.S.C. 553(d). However, there are exceptions to the advance notice requirement where a substantive rule "relieves a restriction" or where the Commission otherwise finds good cause to make the rule effective less than 30 days after publication. 5 U.S.C. 553(d) (1) and (3). There is good cause to make the amendments adopted here effective immediately. While the preamble to Order No. 451–A suggested that purchasers could renegotiate in step 2 all gas in multi-vintage contracts as those contracts existed on July 18, 1986 regardless of subsequent assignments, the regulations adopted in that order only permitted purchasers to renegotiate gas currently owned by the assignor or assignee initiating good faith negotiation. *See* the discussion at page 11. Therefore, making the amendments concerning assignments effective immediately is necessary to prevent producers from circumventing the purchaser's step 2 rights through assignments after the issuance of this order. The amendments concerning assignment also relieve a restriction on the ability of purchasers, once good faith negotiation has been initiated, to obtain renegotiation of all gas in multi-vintage contracts as of the issuance of this order regardless of subsequent assignments. The amendment concerning the upstream transportation authorization relieves a restriction on the ability of non-Order No. 436 interstate pipelines to continue upstream transportation of gas released under the good faith negotiation rule regardless of the Commission authority under which the prior transportation was performed, and the amendment concerning transportation by intrastate pipelines relieves a restriction on the ability of intrastate pipelines not desiring to become open access pipelines to transport released gas.

The information collection provisions in this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [38] and OMB's implementing regulations.[39] Interested persons can obtain information on these information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown (202) 357–8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer of the Federal Energy Regulatory Commission).

List of Subjects

18 CFR Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending Parts 270 and 284, Title 18, Code of Federal Regulations as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 270—[AMENDED]

1. The authority citation for Part 270 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E. O. 12,009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

2. Section 270.201 is amended by redesignating the present paragraphs (a)(5) through (a)(7) as paragraphs (a)(6) through (a)(8) and by adding new paragraphs (a)(5) and (b)(5) and revising the redesignated paragraph (a)(7) as follows:

§ 270.201 Good faith negotiation procedures.

(a) *Applicability, definitions, and general rules.*

* * * * *

(5)(i) A first seller that validly assigns or otherwise transfers gas subject to an existing contract on or after June 3, 1987 may not request a nomination of price under the provisions of this section for any gas sold under any existing contract with that purchaser unless the purchaser's right to renegotiate, under the provisions of this section, the terms of sale of the assigned gas are unaffected by the assignment.

(ii) A first seller to whom gas subject to an existing contract is validly assigned, or otherwise transferred, on or after June 3, 1987 may not request nomination of a price under the provisions of this section for the assigned gas, unless the purchaser's right to renegotiate, under the provisions of this section, the terms of sale of all gas sold under any existing contract between the purchaser and the assignor on June 3, 1987 are unaffected by the assignment.

* * * * *

(7) Any deadline under this section for requesting a nomination of a price, or for nominating a price in response to such a request, may be extended by mutual agreement of the parties in writing. Any notice required under this section to be given before a first seller or purchaser abandons or terminates sales or purchasers may be shortened by mutual agreement of the parties in writing.

* * * * *

(b) *Requests for negotiation and nomination of price.*

* * * * *

(5)(i) The provisions of this paragraph apply when (A) a first seller validly assigns (or otherwise transfers) gas subject to an existing contract to another first seller on or after June 3, 1987 and (B) the assignor or assignee is eligible to request nomination of a price under paragraph (b)(1) of this section.

(ii) If the assignor requests nomination of a price, under paragraph (b)(1) of this section, for old gas sold under any contract between it and the purchaser, the purchaser may request nomination of a price under paragraph (b)(2) of this section for any gas which on June 3, 1987

Williams, of increased gas sales prices that may result from *Martin* would occur regardless of whether Order Nos. 451 and 451–A were stayed.

[38] 44 U.S.C. 3501–3520 (1982).

[39] 5 CFR 1320 (1986).

was subject to an existing contract between the purchaser and the assignor.

(iii) If the assignee requests nomination of a price under paragraph (b)(1) of this section for the assigned gas, the purchaser may request nomination of a price for any gas which on June 3, 1987, was subject to an existing contract between the assignor and the purchaser, but the purchaser may not request nomination of a price for any other gas.

(iv) If the assignee requests nomination of a price under paragraph (b)(1) of this section for old gas other than the assigned gas, the purchaser may not request nomination of a price under paragraph (b)(2) of this section for the assigned gas.

(v) The purchaser must address any requests for nomination of a price authorized by paragraphs (b)(5) (ii) or (iii) of this section to the first seller currently selling it the gas for which nomination of a new price is requested.

(vi) If a first seller receives a request for nomination of a price authorized by paragraph (b)(5) (ii) or (iii) of this section with respect to an existing contract for which it did not make a nomination request under paragraph (b)(1) of this section, the first seller may request under paragraph (b)(3) of this section that the purchaser nominate a price for any old gas sold under that contract, whether or not the contract was named in the nomination request of the assignor or assignee under paragraph (b)(1) of this section.

* * * * *

PART 284—[AMENDED]

3. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); E.O. 12,009, 3 CFR 142 (1978).

4. The entries for §§ 284.225 and 284.226 in the table of contents for Part 284 are revised to read as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

* * * * *

Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate and Intrastate Pipelines on Behalf of Others and Service by Local Distribution Companies

Sec.

* * * * *

284.225 Transportation by interstate or intrastate pipelines of gas released under the good faith negotiation procedures.

284.226 Transportation by interstate or intrastate pipelines upstream of pipelines releasing gas under the good faith negotiation procedures.

* * * * *

5. Section 284.225 is revised to read as follow:

§ 284.225 Transportation by interstate and intrastate pipelines of gas released under the good faith negotiation procedures.

(a) *Applicability.* This section applies to any interstate pipeline that is required to transport natural gas under paragraph (h) of this section of the good faith negotiation procedures in § 270.201 of this chapter and to any intrastate pipeline that purchased gas immediately before its release due to termination or abandonment under § 270.201 (c), (e), or (f) of this chapter.

(b) *Blanket certificate for interstate pipelines.* An interstate pipeline is granted a blanket certificate of public convenience and necessity that authorizes firm and interruptible transportation of natural gas to any existing customer of the interstate pipeline or to any pipeline to which the interstate pipeline is interconnected, if the gas is released due to termination or abandonment under § 270.201 (c), (e), or (f) of this chapter.

(c) *Blanket certificate for intrastate pipelines.* An intrastate pipeline is granted a blanket limited jurisdiction certificate of public convenience and necessity that authorizes firm and interruptible transportation of natural gas, on behalf of any interstate pipeline or any local distribution company served by an interstate pipeline, to any existing customer of the intrastate pipeline or to any pipeline to which the intrastate pipeline is interconnected, if the gas is released due to termination or abandonment under § 270.201 (c), (e), or (f) of this chapter.

(d) *Definition.* For purposes of this section, "existing customer" means a customer with which the interstate or intrastate pipeline has a contract for the sale or transportation of gas which is in effect on the date a written contract is executed to purchase the gas for which transportation service is available under this section.

(e) *Transportation rates for interstate pipelines*—(1) *Transportation service within contract demand.* If an interstate pipeline provides transportation of gas to an existing customer under this section and, as a result, the total volumes of gas sold and transported to that customer on a firm basis do not exceed existing firm contract demand by that customer, the interstate pipeline:

(i) Must base its transportation rate for such gas on the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7 and § 284.8(d);

(ii) Must waive any transportation reservation fee to the extent that a customer pays for facilities associated with such transportation service through demand charges under its firm sales rate schedule;

(iii) Must credit the volumes of gas transported against any minimum commodity bill obligation; and

(iv) May recover costs, on an Mcf or MMBtu basis, associated with standing by to serve a firm sales rate schedule customer that does not reduce its contract demand, if the interstate pipeline revises its sales rate schedules on file with the Commission.

(2) *Transportation service in excess of contract demand.* If an interstate pipeline provides transportation of gas to an existing customer under this section and, as a result, the total volumes of gas sold and transported to that customer exceed existing firm contract demand to that customer, the transportation rate for such gas must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7 and either § 284.8(d) for firm service or § 284.9(d) for interruptible service.

(3) *Transportation service for other customers.* If an interstate pipeline provides transportation of gas under this section to any pipeline or customer other than an existing customer on a firm basis, the transportation rate for such gas must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7 and either § 284.8(d) for firm service or § 284.9(d) for interruptible service.

(4) *Interim rates.* If an interstate pipeline does not have a transportation rate schedule on file with the Commission that conforms to § 284.7 and either § 284.8(d) for firm service or § 284.9(d) for interruptible service, the interstate pipeline must file such a rate schedule within 60 days after first providing transportation service under this section. Until such a rate schedule becomes effective, the interstate pipeline must provide the transportation service using the rate in one of the interstate pipeline's transportation rate

schedules on file with the Commission which the interstate pipeline determines covers service comparable to transportation service authorized under this section.

(f) *Transportation rates for intrastate pipelines*—(1) *General rule.* Rates and charges for transportation of natural gas by intrastate pipelines under this section shall be fair and equitable as determined in accordance with § 284.123(b) of this chapter, but the intrastate pipeline's election under § 284.123(b) shall not be subject to the conditions in §§ 284.8(b) and 284.9(b) of this chapter.

(2) *Treatment of revenues.* The Commission presumes that all revenues received by an intrastate pipeline in connection with transportation authorized under this section and computed in accordance with § 284.123(b)(1) of this chapter have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation charges by the intrastate pipeline for service to intrastate customers.

(3) *Presumptions.* If the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1) of this chapter the rate charged is presumed to be:

(i) Fair and equitable; and

(ii) Not in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(4) *Filing requirements.* Within 30 days of commencement of new service, any intrastate pipeline that engages in transportation arrangements under this section must file with the Commission a one-time statement that describes how the pipeline will engage in these transportation arrangements, including operating conditions, such as quality standards and financial viability of the shipper. If the pipeline changes its operations under this subpart, it must amend the statement and file such amendments not later than 30 days after commencement of the change in operations.

(g) *Reporting requirements.* An interstate pipeline that transports gas under a certificate granted by this section is subject to the reporting requirements of § 284.223(f). An intrastate pipeline that transports gas under a certificate granted by this section is subject to the reporting requirements of § 284.126.

(h) *Terms and conditions of service.* (1) The terms and conditions of service provided under a blanket certificate granted by this section must conform to the transportation requirements of the shipper, subject to reasonable operating conditions of the pipeline and its available pipeline capacity.

(2) An interstate pipeline that transports gas under a certificate granted by this section and is not otherwise subject to the non-discriminatory access provisions of § 284.8(b) of § 284.9(b) is not required to transport on behalf of others any gas not released due to termination or abandonment under the good faith negotiation procedures of § 270.201 of this chapter.

(3) If a pipeline that transports gas under a certificate granted by this section becomes subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b), its authority and service obligation under the certificate to transport gas purchased under a contract in effect before the pipeline becomes subject to those provisions terminates only when the contract expires or is terminated.

6. Section 284.226 is revised to read as follows:

§ 284.226 Transportation by interstate and intrastate pipelines upstream of pipelines releasing gas under the good faith negotiation procedures.

(a) *Applicability.* This section applies to any upstream interstate or intrastate pipeline that is not subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b) of this chapter and that provided transportation of gas immediately prior to its release by any interstate or intrastate pipeline due to termination or abandonment under the good faith negotiation procedures in § 270.201 of this chapter. Such upstream pipelines were those authorized under any Commission regulation to transport natural gas, prior to the release of that gas due to termination or abandonment under § 270.201 (c), (e), or (f) of this chapter, along any line between the wellhead and the pipeline that purchased the gas immediately before its release.

(b) *Blanket certificate.* (1) Upstream interstate pipelines are granted a blanket certificate of public convenience and necessity that authorizes transportation of natural gas release due to termination or abandonment under § 270.201 (c), (e) or (f) of this chapter on behalf of any shipper to any interstate pipeline releasing gas under § 270.201 of this chapter, under the same terms and conditions as previously provided to the releasing pipeline.

(2) Upstream intrastate pipelines are granted a blanket limited jurisdiction certificate of public convenience and necessity that authorizes transportation of natural gas released due to termination of abandonment under § 270.201 (c), (e) or (f) of this chapter, on behalf of any interstate pipeline or local distribution company served by an interstate pipeline, to any pipeline releasing gas under § 270.201 of this chapter, under the same terms and conditions as previously provided to the releasing pipeline.

(c) *Transportation rates.* The rates charged by such third-party, upstream pipelines for transportation under this section shall be identical to the rates charged under any pre-existing transportation authorization for the same service previously provided to the releasing pipeline.

(d) *Reporting requirements.* An interstate pipeline that transports gas under the certificate granted by this section is subject to the reporting requirement of § 284.223(f). An intrastate pipeline that transports gas under the certificate granted by this section is subject to the reporting requirements of § 284.126.

[FR Doc. 87-12977 Filed 6-8-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS AUSTIN and USS SHREVEPORT

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS AUSTIN (LPD-4) and USS SHREVEPORT (LPD-12) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special function as naval amphibious transport dock ships. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 28, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA

22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS AUSTIN (LPD-4) and USS SHREVEPORT (LPD-12) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with their special function as Navy ships. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on these ships in a manner differently from that prescribed herein will adversely affect the ships' ability to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessels:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, section 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, section 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, section 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, section 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, section 2(b)	Forward masthead light not in forward quarter of ship. Annex I, section 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, section 3(a)	Percentage horizontal separation attained.
•	•	•	•	•	•	•			
USS AUSTIN	LPD-4							X	37
USS SHREVEPORT	LPD-12							X	49

Dated: May 28, 1987.

Approved:

James H. Webb, Jr.,

Secretary of the Navy.

[FR Doc. 87-13048 Filed 6-8-87; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS CLEVELAND

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS CLEVELAND (LPD-7) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval amphibious transport dock ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 28, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS CLEVELAND (LPD-7) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, section 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, section 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, section 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, section 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, section 2(b)	Forward masthead light not in forward quarter of ship. Annex I, section 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, section (3)(a)	Percentage horizontal separation attained.
•	•	•	•	•	•	•			
USS CLEVELAND	LPD-7							X	49

Dated: May 28, 1987.
Approved:
James H. Webb, Jr.,
Secretary of the Navy.
[FR Doc. 87-13049 Filed 6-8-87; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS OKLAHOMA CITY

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS OKLAHOMA CITY (SSN-723) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: May 28, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS OKLAHOMA CITY (SSN-723) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS OKLAHOMA CITY (SSN-723) is a member of the SSN-688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS OKLAHOMA CITY (SSN-723).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Section 2(a)(i), Annex I
USS Oklahoma City.	SSN-723	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; section 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; section 2(k), Annex I	Anchor lights, relationship of aft light to forward light in meters; section 2(k), Annex I
•	•	•	•	•	•	•		
USS OKLAHOMA CITY	SSN-723			209°	4.3	6.1	3.4	1.7 below.

Dated: May 28, 1987.
Approved:
James H. Webb, Jr.,
Secretary of the Navy.
[FR Doc. 87-13050 Filed 6-8-87; 8:45 am]
BILLING CODE 3810-AE-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

[FPMR Amdt. G-83]

Reduce Number of Copies in Standard Form 1203, U.S. Government Bill of Lading—Privately Owned Personal Property Set

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is reducing the number of copies in the Standard Form (SF) 1203, U.S. Government Bill of Lading—Privately Owned Personal Property (POPPGBL), set from nine to seven by eliminating the following: SF 1206—Freight Waybill, Carrier's Copy, and one copy of SF 1203–A, Memorandum Copy. Separate sheets of 1203–A's have been eliminated because of low usage.

EFFECTIVE DATE: June 9, 1987.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Office of Transportation Audits, (FWC) (202) 786-3014 or FTS 786-3014.

SUPPLEMENTARY INFORMATION: Standard Form 1203 (POPPGBL) was promulgated by GSA at the request of the Department of Defense (DOD) through its traffic manager, the Military Traffic Management Command (MTMC). The nine-part form was specifically designed to fill the information and distribution needs for DOD's movements of household goods. Section 101–41.302(b) of the Code of Federal Regulations (CFR) states that the use of SF 1203 is mandatory for DOD but optional for other Federal agencies.

MTMC has requested that GSA reduce the number of copies in the SF 1203 set from nine to six, thereby eliminating the SF 1206—Freight Waybill, Carriers Copy, and two copies of the SF 1203–A Memorandum Copy. MTMC reports that DOD's increased use of state of the art printers which can print only six copies necessitates reducing the present set. A proposed ruel was published in the **Federal Register** on July 5, 1985 (50 FR 27626).

Discussion of major comments. The following summaries major comments, suggestions, and our determinations and actions taken. Six comments were received: four from household goods carriers, one from a household goods forwarders' association, and one from a movers' conference. All of the respondents objected to a six-part SF 1203, stating that it would not provide sufficient copies for internal use. Two of the carriers also stated that nine-part paper is available which will provide legible copies on many or most printers. However, MTMC reports that such paper is not compatible with all printer systems used by DOD. As an alternative to the proposed six-part SF 1203, one van line and the movers' conference recommended a seven-part form identical to the existing nine-part SF 1203 except that the SF 1206-Freight Waybill, Carriers Copy, and the last copy of SF 1203–A, Memorandum copy would be eliminated. MTMC, the military services and GSA agree with this counter proposal and therefore are adopting the suggestion. Finally, the household goods forwarders' association questioned GSA's authority to propose rules dealing with the SF 1203. Title 4 of the Code of Federal Regulations, Subchapter D, Transportation, Part 51.2 provides that standard forms and procedures pertaining to payments for transportation services furnished for account of the United States is so closely related to the audit and adjustment of claims pertaining thereto that this procedure may be prescribed by the Administrator of General Services.

Publication of this final rule has been withheld until now to allow for an orderly transition from the previous SF 1203 which, although revised in April 1985, did not become available to users until June 1986. An exception to regulations 41 CFR 101–11.806–1(a) states that any exception or deviation granted to a standard form is voided when that standard form is revised. Therefore, agencies that have been granted an exception to deviate from the regulations pertaining to SF 1203 (Revised April–85) must refile for an exception with GSA (FWC), if they wish to continue their exception with these new revisions of SF 1203.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), GSA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and FIRMR 201–45.6.

List of Subjects in 41 CFR 101–41

Accounting, Claims, Freight, Freight forwarders, Government property management, Moving of household goods, Transportation.

GSA is amending 41 CFR Part 101–41 as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR 101–41 continues to read as follows:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

Subpart 101–41.3—Freight Transportation Services Furnished for the Account of the United States

2. Section 101–41.302–1 is amended by removing and reserving paragraph (z) as follows:

§ 101–41.302–1 Listing of forms.

* * * * *

(z) [reserved]

* * * * *

3. Section 101–41.302–2 is amended by revising paragraph (c) and removing paragraph (e) as follows:

§ 101–41.302–2 Description and distribution of bills of lading.

* * * * *

(c) The U.S. Government Bill of Lading-Privately Owned Personal Property (POPPGBL) is a seven-part form available in either snap-out or computer pin-feed formats. The sets are carbon interleaved for simultaneous preparation. The POPPGBL is arranged in the following order:

(1) SF 1203 (original) is given to the carrier upon tender of the shipment for use as supporting documentation and is to be submitted with the voucher

covering the transportation charges involved.

(2) SF 1204 (shipping order) is retained by the carrier's agent at the shipping point.

(3) SF 1203–A (memorandum copy), one of three copies, for use by the shipper for fiscal or administrative purposes. The remaining two memorandum copies are behind the SF 1203–B.

(4) SF 1205 (freight waybill (original)) is given to the origin carrier and is either carried to destination or is otherwise sent to destination in compliance with origin carrier's instructions. It also serves as the substitute billing document when the original POPPGBL is lost or destroyed.

(5) SF 1203–B (memorandum copy-consignee) is given to the consignee (property owner) at time of pickup of the shipment.

(6) SF 1203–A (memorandum copy) same as (3).

(7) SF 1203–A (memorandum copy) same as (3).

* * * * *

Subpart 101–41.49—Illustration of Forms

§ 101–41.4901–1206 [Removed]

4. Section 101–41.4901–1206 is removed.

Dated: May 19, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–13024 Filed 6–8–87; 8:45 am]

BILLING CODE 6820–24–M

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41 CFR Part 101–41

[FPMR Amdt. G–82]

Payment of Substitute Documents

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration amends the Federal Property Management Regulations by providing that payment on carrier billings supported by substitute billing documents may be delayed until certifying officers can verify that a prior payment has not been made. Military finance offices have reported that a significant number of duplicate payments result when payment on a billing supported by a substitute document is made prior to the receiving of the original billing document or when a substitute billing document is submitted for payment less than 30 calendar days after the original billing document has been submitted. Because payments are generally made within 30 days after receipt of a billing, certifying offices do not have sufficient time to ensure that previous payments have not been made. This amendment alleviates the duplicate payment problem by allowing agencies to consider substitute billings as doubtful claims and delaying payment until verification has been made.

EFFECTIVE DATE: June 9, 1987.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, (202) 786–3014 or FTS 786–3014.

SUPPLEMENTARY INFORMATION: The Prompt Payment Act requires that carrier bills be paid by the due date, usually not later than 30 calendar days after receipt of a proper billing, to avoid interest penalties. A previous change to section 101–41.307 permits carriers to submit a self-certified original freight waybill (SF 1105 or SF 1205) for payment when the original Government bill of lading (GBL) or original personal property GBL is lost or destroyed. That change enabled carriers to receive timely payments but has significantly increased the number of duplicate payments made by paying offices.

A Notice of Proposed Rulemaking was published in the **Federal Register** on July 31, 1986 (51 FR 27425). A 30-day comment period ending September 2, 1986, was provided. There were two responses. Both respondents concurred with the proposal; however, one also recommended that a clause be included exempting payment of substitute documents from the Prompt Payment Act (PPA). This suggestion was adopted by adding to the proposed rule a reference to section 101–41.604–2(b)(6) which excludes doubtful claims from the interest penalties under the PPA.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act [5 U.S.C. 605(b)], GSA has also determined that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96–511, the Paperwork Reduction Act of 1980, and FIRMR 201–45.6.

List of Subjects in 41 CFR Part 101–41

Air carriers, Accounting, Claims, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

Title 41, Part 101–41 of the Code of Federal Regulations is amended as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 continues to read:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by revising § 101–41.307–3 as follows:

§ 101–41.307–3 Payment of substitute documents.

Subpart 101–41.3—Freight Transportation Services Furnished for the Account of the United States

3. Section 101–41.307–3 is revised to read as follows:

§ 101–41.307–3 Payment of substitute documents.

SF 1105 and SF 1205 documents certified in accordance with procedures in § 101–41.307–2 may be construed as doubtful claims and payment delayed (as set forth in § 101–41.604–2(b)(6)] until certifying officers verify that transportation bills associated with these forms have not previously been paid.

Dated: May 19, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–13023 Filed 6–8–87; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 73

[MM Docket No. 86-406; FCC 87-137]

Broadcast Services; Amendment of the Main Studio Location and Program Origination Rules for Radio and Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action modifies § 73.1125 of the Commission's Rules, the main studio location rule, to permit broadcast stations to locate their main studios at any point within their principal community contours. It also eliminates § 73.1130 of the Commission's Rules, the program origination rule for radio and television broadcast stations. This action is needed to conform these requirements to current broadcast station operations and to allow broadcasters additional flexibility consistent with Commission objectives.

EFFECTIVE DATE: July 16, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eileen E. Huggard, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in MM Docket No. 86-406, adopted April 16, 1987, and released June 1, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Report and Order

1. By this action, the Commission amends its main studio rules to conform their requirements to current modes of broadcast station operations. Section 73.1125 of the Commission's Rules, the main studio location rule, has required, with certain exceptions, that every broadcast station maintain its main studio in its community of license. The program origination rule, found in § 73.1130 of the Commission's Rules, has required that every broadcast station originate more than 50 percent of its non-network programs from its main studio or other points situated within its community of license. These rules were adopted as means to implement section 307(b) of the Communications Act of 1934, as amended, on the determination that an accessible main studio and the origination of substantial amount of programming in the community assures interaction between the station and the community, and also assures programming which is responsive to the interests and needs of the community.

2. The *Notice of Proposed Rule Making* in this proceeding was adopted on October 16, 1986, in response to a Petition for Rule Making filed by the Arizona Justice Committee. The Commission proposed, for both radio and television broadcast stations, amendment of the main studio location rule to allow a station to locate its main studio within its service area or within its city grade ("principal community") contour or, alternatively, elimination of the main studio rule, and the complete elimination of the program origination rule.

3. Developments in broadcast technology and production methods, and competitive marketplace forces, have eroded the role of the main studio in the origination of a broadcast station's programming. We no longer believe, therefore, that studio facilities within the political boundaries of the community of license necessarily promote responsive programming. In addition, as residents generally communicate with the station by telephone or mail, and in light of developments in transportation facilities, a studio located outside the community may be as accessible as a studio within the community. Moreover, the present rule may preclude the efficiencies to be realized by collocating the station's studio at its transmitter site and may prevent a station from relocating to a lower cost area. Based upon the foregoing factors, we believe it is in the public interest to relax the rule to permit a station to locate its main studio outside its community of license at any point within its principal community contour.

4. At this time, we reject our alternative proposals to eliminate the rule or adopt a service area location standard. We have adopted a prudent course of action, which will, nonetheless, grant most stations the flexibility they require to obtain the efficiencies which are now precluded by the present rule.

5. To assure meaningful community participation in our licensing process, we will require that every station maintain it public inspection file within its community of license and a local or toll-free telephone number.

6. The program origination rule found in § 73.1130 is eliminated because the original rationale of the rule is no longer valid. Today, programming originating from within the community is not necessarily responsive to the interests and needs of the community, and broadcast stations, utilizing rapidly developing technology, are able to originate responsive programming from whatever its source. In addition, the rule imposes unnecessary costs and may actually preclude the presentation of responsive programming.

7. The amended rules will be applicable to all broadcast stations. We believe our action is fully consistent with section 307(b) of the Act. We conformed our requirements to current modes of station operations, granting a substantial degree of additional flexibility to broadcasters, without altering any of their obligations or their ability to fulfill those obligations.

8. Finally, the dual city licensing provision now found in § 73.1120 is deleted. That provision was adopted to alleviate a potential burden of the deleted program origination rule. In addition, we are modifying the language of certain rules regarding the local public inspection file and the modification of station facilities to conform their language to the amended main studio location rule.

9. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and have been found to impose new or modified information collection requirements on the public. Implementation of these new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

10. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the complete decision, which may be obtained from the Commission or its copy contractor.

Ordering Clauses

11. Accordingly, it is ordered that under the authority contained in sections 1, 3, 4 (i) and (j), 303, 307(b), 308 and 309 of the Communications Act of 1934, as amended, Parts 0 and 73 of the Commission's Rules and Regulations are amended, effective July 16, 1987, as set forth below.

12. It is further ordered that FCC Forms 301 and 340 will be amended by separate Commission action, in

accordance with the provisions of this *Report and Order*.

13. It is further ordered that this proceeding is terminated.

List of Subjects

47 CFR Part 0

Reporting and record keeping requirements.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

Rule Changes

Parts 0 and 73 of Title 47 of the Code of Federal Regulations are amended as follows:

1. The authority citations for Parts 0 and 73 continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

PART 0—[AMENDED]

2. Section 0.455 is amended by revising paragraph (b)(1) to read as follows:

§ 0.455 Other locations at which records may be inspected.

* * * * *

(b) *Mass Media Bureau.* (1) Applications for broadcast authorizations and related files are available for public inspeciton in the Mass Media and Dockets Reference Room. See § 0.453(a)(2). Certain broadcast applications, reports and records are also available for inspection in the community in which the station is located or is proposed to be located. See §§ 73.3526 and 73.3527.

* * * * *

PART 73—[AMENDED]

§ 73.1120 [Amended]

3. Section 73.1120, *Station location*, is amended by removing paragraphs (b) and (c).

4. Section 73.1125 is revised to read as follows:

§ 73.1125 Station main studio location.

(a) Each AM, FM and TV broadcast station shall maintain a main studio within the station's principal community contour as defined in § 73.24(j) (5 mV/m daytime contour), § 73.315(a) and § 73.685(a), respectively, of this chapter, except

(1) AM stations licensed as synchronous amplifier transmitters ("AM boosters") or,

(2) An FM station whose main studio is located at the collocated main studio-transmitter site of a commonly-owned AM station licensed to the same principal community or,

(3) Any AM, FM or TV broadcast station whose main studio is located in the community to which the station is licensed to serve at a point situated outside the principal community contour or,

(4) AM, FM or TV stations, when good cause exists for locating the main studio outside the station's principal community contour and that to do so would be consistent with the operation of the station in the public interest.

(b) Relocation of the main studio may be made:

(1) From one point to another within the principal community contour or from a point outside the principal community contour to one within it, without specific FCC authority, but notification to the FCC in Washington shall be made promptly; however,

(2) From a point within the principal community contour to one outside it or from one such point outside the community contour to another, only by first securing modification of construction permit or license (FCC Forms 301 for commercial stations and 340 for noncommercial educational stations.)

(3) Exceptions to paragraph (b)(2) of this section are:

(i) Relocation of the main studio of an FM station to the collocated main studio-transmitter site of a commonly-owned AM station licensed to the same principal community; and,

(ii) Relocation of the main studio from one point to another within the principal community of license or from a point outside the principal community to one within it.

(iii) Notification to the FCC in Washington shall be made promptly of such relocations described in paragraphs (b)(3) (i) and (ii) of this section.

(c) Each AM, FM and TV broadcast station shall maintain a local telephone number in its community of license or a toll-free number.

(d) Where the principal community to be served does not have specifically defined political boundaries, applications will be considered on a case-by-case basis by the FCC to determine if the main studio is located within the principal community to be served.

§ 73.1130 [Removed]

5. Section 73.1130, *Station program origination*, is removed.

6. Section 73.1690 is amended by revising paragraphs (b)(3) and (d)(1) to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(b) * * *

(3) Change in location of the main studio to a location outside the station's principal community contour, except as provided for in § 73.1125.

* * * * *

(d) * * *

(1) Change in studio location within the principal community contour. See § 73.1125.

* * * * *

7. Section 73.3526 is amended by revising paragraph (d) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(d) *Location of records.* The file shall be maintained at the main studio of the station, where such studio is located in the community to which the station is licensed, or any accessible place (such as a public registry for documents or an attorney's office) in the community to which the station is or is proposed to be licensed, and shall be available for public inspection at any time during regular business hours.

* * * * *

8. Section 73.3527 is amended by revising paragraph (d) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(d) *Location of records.* The file shall be maintained at the main studio of the station, where such studio is located in the community to which the station is licensed, or at any accessible place (such as a public registry for documents or an attorney's office) in the community to which the station is or is proposed to be licensed, and shall be available for public inspection at any time during regular business hours.

* * * * *

9. Section 73.3538 is amended by revising paragraphs (a)(5), (a)(6) and (a)(7) to read as follows:

§ 73.3538 Application to make changes in an existing station.

* * * * *

(a) * * *

(5) To move the main studio location of an AM station to a location outside the principal community contour or to move the studio from one location outside the principal community contour to another such location (other than to a point within the principal community). See § 73.1125.

(6) To move the main studio of an FM station to a location outside the principal community contour or to move the studio from one location outside the principal community contour to another such location (other than to the collocated studio-transmitter site of a commonly-owned AM station licensed to the same community or to a point within the principal community). See § 73.1125.

(7) To move the main studio of a TV station to a location outside the principal community contour or to move the studio from one location outside the principal community contour to another such location (other than to a point within the principal community). See § 73.1125.

* * * * *

10. Section 73.3580 is amended by revising paragraph (f)(9) to read as follows:

§ 73.3580 Local public notice of filing of broadcast applications.

* * * * *

(f) * * *

(9) A statement that a copy of the application, amendment(s), and related material are on file for public inspection at a stated address in the community in which the station is located or is proposed to be located. See §§ 73.3526 and 73.3527.

* * * * *

11. Section 73.3594 is amended by revising paragraph (d)(5) to read as follows:

§ 73.3594 Local public notice of designation for hearing.

* * * * *

(d) * * *

(5) A statement that a copy of the application, amendment(s), and related material are on file for public inspection at a stated address in the community in which the station is located or is proposed to be located. See §§ 73.3526 and 73.3527.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-12958 Filed 6-8-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 2

Removal of Footnote US234 From the Table of Frequency Allocations in the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends Part 2 of its rules to remove footnote US234 from the Table of Frequency Allocations. Footnote US234 provides for the primary operation of several Government stations in the 14.4–14.5 GHz band until December 31, 1986. Since this date has passed, footnote US234 is obsolete and is therefore being removed.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Husnay, Office of Engineering and Technology, (202) 653–8106.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocations.

Order

Adopted: May 11, 1987.

Released: May 18, 1987.

By the Managing Director:

1. Government fixed and mobile stations in the 14.4–14.5 GHz band are allocated on a secondary basis to the fixed-satellite service, as indicated in the Table of Frequency Allocations in § 2.106 of the Commission's Rules. However, footnote US234 allows fixed and mobile government stations located at Point Mugu, CA; Fort Bragg, NC; Vandenberg, CA; and Bolling AFB, DC; to operate on a primary basis in the 14.4–14.5 GHz band until December 31, 1986. After December 31, 1986, these Government stations may continue to operate on a secondary basis. Since this date has passed, footnote US234 is now obsolete and is therefore being removed.

2. This action is considered to be editorial in nature. Accordingly, it is ordered that footnote US234 in Part 2 of the Commission's Rules is removed pursuant to the authority of 47 U.S.C. 154(i), 302, and 303, and pursuant to § 0.231(d) of the Commission's Rules. Because the deletion of US234 is non-substantive, the notice and comment provisions as well as the effective date requirements of the Administrative Procedure Act are inapplicable. This action becomes effective immediately.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

PART 2—[AMENDED]

Part 2 of title 47 of the CFR is amended as follows:

1. The authority citation for Part 2 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 2.106 [Amended]

2. Section 2.106 is amended by removing footnote US234 from the fourth and fifth columns of the GHz band 14.4–14.5 and from the list of US footnotes.

[FR Doc. 87-13080 Filed 6-8-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 2 and 15

[Gen. Docket No. 86-339; FCC 87-167]

Relaxation of Equipment Authorization Procedure Applicable to the Receiver Portion of a Transceiver

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to change the equipment authorization required for the receiver portion of a type accepted or certified transceiver. This action will relax the equipment authorization required for the receiver portion of such transceivers from notification to verification, and will relieve the applicants from having to file two separate applications for equipment approval.

EFFECTIVE DATE: July 13, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George Harenberg, Technical Standards Branch, Office of Engineering and Technology, (202) 653–7314.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order FCC 87–167 relating to the Commission's action adopted on May 1, 1987, and released on May 27, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

SUMMARY: The Commission is changing the equipment authorization required for the receiver portion of a type accepted or certified transceiver (transmitter/receiver). The Commission's has shown that the receiver portion of these transceivers have demonstrated an excellent record of compliance with technical standards set forth in the Rules, and that continued technical oversight can be relaxed from notification to verification. Type acceptance or certification of the

transmitter portion will continue to be required to maintain compliance with the Rules, and to prevent interference from these devices.

List of Subjects in 47 CFR Parts 2 and 15

Radio, Communications equipment.

William J. Tricarico,

Secretary.

Part 2 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Subpart J—Equipment Authorization Procedures

1. The authority citation for Part 2, Subpart J is revised to read as follows:

Authority: Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; sec. 302, 82 Stat. 290; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. The authority citations for §§ 2.925 and 2.926 are removed.

3. In § 2.925, paragraph (b)(4) is added to read as follows:

§ 2.925 Identification of Equipment.

* * * * *

(b) * * *

(4) For a transceiver, the receiver portion of which is subject to verification pursuant to § 15.69(c) of this chapter, the FCC Identifier required for the transmitter portion shall be preceded by the term "FCC ID:".

* * * * *

§ 2.926 [Amended]

4. In § 2.926, paragraph (e) is revised to read as follows: § 2.926 FCC identifier.

* * * * *

(e) No FCC Identifier may be used on equipment to be marketed unless that specific identifier has been validated by a grant of equipment authorization issued by the Commission. This shall not prohibit placement of an FCC identifier on a transceiver which includes a verified receiver subject to § 15.69, provided that the transmitter portion of such transceiver is covered by a valid grant of type acceptance or certification. The FCC Identifier is uniquely assigned to the grantee and may not be placed on the equipment without authorization by the grantee. See § 2.803 for conditions applicable to the display at trade shows of equipment which has not been granted equipment authorization where such grant is required prior to marketing. Labelling of such equipment may include model or type numbers, but shall not include a purported FCC Identifier.

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—[AMENDED]

1. The authority citation for Part 15 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Interpret or apply Sec. 301, 48 Stat. 1081; 47 U.S.C. 301, unless otherwise noted.

2. Section 15.69, paragraph (b), is amended by adding item 8 to read as follows:

§ 15.69 Equipment authorization for a receiver.

* * * * *

(b) * * *

Type of receiver	Equipment authorization required
* * * * *	
8. The receiver portion of all transceivers, which contain a type accepted or certified transmitter.	Verification

* * * * *

[FR Doc. 87-12847 Filed 6-8-87; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 52, No. 110
Tuesday, June 9, 1987

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 86-067]

Exportation of Cattle; Increasing Pen Size on Ocean Vessels

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to increase, from 120 sq. ft. to 226 sq. ft., the maximum size of pens in which cattle may be shipped in ocean vessels. This action appears necessary because most pens in ocean vessels equipped to transport cattle are between 120 and 226 sq. ft., and we have no evidence that pens of this larger size cause illness or injury to cattle shipped in them. Our proposal would remove an unnecessary restriction while maintaining high standards for humane treatment of cattle shipped by ocean vessel.

DATE: All comments postmarked on or before August 10, 1987 will be considered.

ADDRESS: Send your comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 86-067. Comments we receive may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Bowen, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, Veterinary Services, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8499.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 91 concern inspection and handling of livestock exported from the United States. Section 91.25 contains space requirements for animals on ocean vessels. These requirements are necessary to control the onboard movement of animals and to allow separation of animals by weight and type while ensuring that animals have adequate ventilation and sufficient room to feed, water, rest, and receive proper care during ocean voyages.

Currently, the regulations in § 91.25(f)(1) prohibit the shipment of cattle by ocean vessel in pens larger than 120 sq. ft. We propose to increase the maximum allowable size of these pens to 226 sq. ft. Other requirements for shipping cattle by ocean vessel, including the standards for number of cattle per square foot of pen space, would remain the same.

Only a limited number of ocean vessels worldwide are equipped as livestock carriers, and most pens in these ocean vessels are between 120 and 226 sq. ft. Approximately 40 of these ocean vessels are available to call at U.S. ports. These ships also transport cattle for other major cattle-exporting countries, most of which, including Australia, Canada, Great Britain, and New Zealand, allow cattle shipped by ocean vessel to travel in pens nearly twice as large as the United States allows: Canada, New Zealand, and Australia allow pens up to 226 sq. ft.; Great Britain allows pens up to 225 sq. ft. With U.S. regulations effectively prohibiting shipment of cattle by these ocean vessels, without modifications, cattle exporters in the United States are at a serious disadvantage.

Furthermore, we have no evidence that our current restriction on the size of cattle pens in ocean vessels is necessary for the well-being of the cattle. Representatives of the Office of Transportation, United States Department of Agriculture, have surveyed Australian and New Zealand livestock exportation practices and found no indication that cattle shipped by ocean vessel in pens as large as 226 sq. ft. experienced any problems attributable to pen size. In addition, the Deputy Administrator, Veterinary Services, has granted waivers that allowed cattle to be shipped in pens up to 226 sq. ft. We have no evidence, based on these voyages, that the larger pen sizes caused any illness or injuries among the cattle There appears to be no reason to continue to restrict the size of cattle pens on ocean vessels to 120 sq. ft. or smaller.

Our proposal would, therefore, remove an unnecessary trade restriction while maintaining high standards for humane treatment of cattle shipped by ocean vessel.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In 1986, 106,260 cattle were exported from the United States. Approximately 75 percent were shipped by land to Canada and Mexico, approximately 12 percent were shipped by sea, and approximately 13 percent were shipped by air.

Based on current export orders, we estimate that some 120,000 cattle will be exported from the United States in 1987, about 13,740 more than in 1986. About half of the increase represents relatively large orders of cattle that probably will be shipped by sea. Thus, sea shipments of cattle will increase by about 3 percent over 1986. If our proposal is adopted, we do not expect any significant shift in the percentages of cattle shipped by sea as opposed to land and air. The bulk of all cattle exported from the United States is shipped by land to Canada and Mexico. Air and sea carriers are not usually in direct competition for cattle shipments.

Air transportation is used for relatively small loads. A Boeing 747, for example, can carry a maximum of 200,000 lbs., or 400 lightweight (500-lb.) cattle. By contrast, ocean vessels are used for larger loads, typically between 500 and 1,000 head of cattle weighting up to 1,000 lbs. Also, whereas most air shipments can reach destinations anywhere in the world within 24 hours, sea voyages may take several weeks.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, we propose to amend Part 91 as follows:

1. The authority citation would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.25 [Amended]

2. In § 91.25, paragraph (f)(1), "120" would be revised to read "226".

Done at Washington, DC, this 4th day of June, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-13044 Filed 6-8-87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 16

Program Fraud Civil Remedies Act; Implementation

AGENCY: Department of the Treasury, Departmental Offices, Office of Inspector General (OIG).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the Program Fraud Civil Remedies Act of 1986, which authorizes the Department of the Treasury (and certain other federal agencies) to impose through administrative adjudication civil penalties and assessments against persons making false claims and statements to it.

DATE: Comments must be received on or before July 9, 1987.

ADDRESS: Comments may be mailed to the Office of the Inspector General, Department of the Treasury, Room 2412, 1500 Pennsylvania Avenue NW, Washington, DC 20220, or be delivered to that office between 9:00 a.m. and 5:30 p.m., weekdays. Comments may be inspected in Room 2412, Main Treasury between 9:00 a.m. and 5:30 p.m., weekdays.

FOR FURTHER INFORMATION CONTACT: Alexandria Keith, Counsel to the Inspector General, Room 2218, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566-5668.

SUPPLEMENTARY INFORMATION: The Program Fraud Civil Remedies Act ("Act"), Pub. L. 99-509, enacted on October 21, 1986, and codified at 31 U.S.C. 3801 through 3812, generally provides that any person who knowingly submits a false claim or statement to the Federal Government in an amount less than $150,000 may be liable for an administrative civil penalty of not more than $5,000 for each false claim or statement, and, in certain cases, to an assessment equal to double the amount falsely claimed.

The Act vests authority to investigate allegations of liability under its provisions in an agency's investigating official. Based upon the results of an investigation, the agency reviewing official determines, with the concurrence of the Attorney General, whether to refer the matter to a presiding officer for an administrative hearing. Any penalty or assessment imposed under the Act may be collected by the Attorney General, through the filing of a civil action, or by offsetting amounts, other than tax refunds, owed the particular party by the Federal government.

The Act grants agency investigating officials authority to require by subpoena the production of documentary evidence which is "not otherwise reasonably available." If the case proceeds to hearing, the presiding officer may require the attendance and testimony of witnesses as well as the production of documentary evidence.

The Department of the Treasury is proposing to adopt implementing regulations as new 31 CFR Part 16, which would designate the Assistant Secretary of the Treasury for Management as the authority head, the Department's administrative Inspector General as the investigating official, and would assign the role of reviewing official to the General Counsel or his designee.

Any hearing under the Act would be presided over by an Adminstrative Law Judge. Administrative appeals of a presiding officer's decision would be determined by the authority head.

Congress, in other legislation, has provided the United States Customs Service with a comprehensive statutory scheme for penalizing civil violations of the tariff and trade laws, including the prosecution of matters within the jurisdiction of the Court of International Trade (28 U.S.C. 1581). Accordingly, it is not anticipated that the investigating official will, pursuant to his authority under these regulations, investigate allegations of violations of tariff and trade laws, for which an administrative remedy exists under those laws.

Special Analyses

Becaue these proposed regulations relate to agency organization and management they are not subject to Executive order 12291. In general, the proposed rule would establish procedures governing the scope and conduct of administrative adjudications to impose civil penalties and assessments upon persons who submit false claims or statements to the Department. Accordingly, a regulatory impact analysis is not required.

Similarly, it is hereby certified that this proposed regulation would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 604(a)).

List of Subjects in 31 CFR Part 16

Administrative practice and procedure, Department of the Treasury, Fraud, Investigations, Organizations and

functions (Government agencies), Penalties.

Title 31 of the Code of Federal Regulations would be amended to read as follows:

I. In Title 31 of the Code of Federal Regulations, a new Part 16—Regulations Implementing the Program Fraud Civil Remedies—would be added to read as follows:

PART 16—REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Sec.

16.1 Basis and purpose.
16.2 Definitions.
16.3 Basis for civil penalties and assessments.
16.4 Investigation.
16.5 Review by the reviewing official.
16.6 Prerequisites for issuing a complaint.
16.7 Complaint.
16.8 Service of complaint.
16.9 Answer.
16.10 Default upon failure to file an answer.
16.11 Referral of complaint and answer to the ALJ.
16.12 Notice of hearing.
16.13 Parties to the hearing.
16.14 Separation of functions.
16.15 Ex parte contacts.
16.16 Disqualification of reviewing official or ALJ.
16.17 Rights of parties.
16.18 Authority of the ALJ.
16.19 Prehearing conferences.
16.20 Disclosure of documents.
16.21 Discovery.
16.22 Exchange of witness lists, statements, and exhibits.
16.23 Subpoenas for attendance at hearing.
16.24 Protective order.
16.25 Fees.
16.26 Form, filing and service of papers.
16.27 Computation of time.
16.28 Motions.
16.29 Sanctions.
16.30 The hearing and burden of proof.
16.31 Determining the amount of penalties and assessments.
16.32 Location of hearing.
16.33 Witnesses.
16.34 Evidence.
16.35 The record.
16.36 Post-hearing briefs.
16.37 Initial decision.
16.38 Reconsideration of initial decision.
16.39 Appeal to authority head.
16.40 Stays ordered by the Department of Justice.
16.41 Stay pending appeal.
16.42 Judicial review.
16.43 Collection of civil penalties and assessments.
16.44 Right to administrative offset.
16.45 Deposit in Treasury of United States.
16.46 Compromise or settlement.
16.47 Limitations.

Authority: 31 U.S.C. 3801–3812.

§ 16.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* The part—

(1) Established administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 16.2 Definitions.

ALJ means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

Authority means the Department of the Treasury.

Authority head means the Assistant Secretary of the Treasury for Management.

Benefit, when used in the context of false statements made with respect to a benefit, means anything of value including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee. This definition should be distinguished from the limitations on coverage of these regulations with respect to beneficiaries of specific benefit programs which are found in § 16.3(c) below.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) for the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 16.7 below.

Defendant means any person alleged in a complaint under § 16.7 to be liable for a civil penalty or assessment under § 16.3

Department means the Department of the Treasury.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 16.10 or § 16.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Department of the Treasury.

Knows or has reason to know, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms "presents," "submits," and "causes to be made, presented," or "submitted." As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, private organization, State, political subdivision of a State, municipality, county, district, and Indian tribe, and includes the plural of that term.

Presiding officer means an administrative law judge appointed in the authority pursuant to 5 U.S.C 3105 or detailed to the authority pursuant to 3344 of such title.

Representative means an attorney designated in writing by a defendant to appear on his or her behalf in administrative hearings before the Department and to represent a defendant in all other legal matters regarding a complaint made pursuant to these regulations.

Reviewing official means the General Counsel, or another individual in the Legal Division of the Department designated by the General Counsel, who is—

(a) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16; and

(b) Is not subject to supervision by, or required to report to, the investigating official; and

(c) Is not employed in the organizational unit of the authority in which the investigating official is employed.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit, except that such term does not include any claim made in any return of tax imposed by the Internal Revenue Code of 1954.

§ 16.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to an authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty under these regulations regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Includes or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of note more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c)(1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term "benefits" means—

(i) Benefits under the food stamp program (as defined in 3(h) of the Food Stamp Act of 1977);

(ii) Benefits under Chapters, 11, 13, 15, 17, and 21 of Title 38;

(iii) Benefits under the Black Lung Benefits Act;

(iv) Any annuity or other benefit under the Railroad Retirement Act of 1974;

(v) Benefits under the National School Lunch Act;

(vi) Benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

(vii) Benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(viii) Benefits under part A of the Energy Conservation in Existing Buildings Act of 1976;

(ix) Benefits under the supplemental security income program under title XVI of the Social Security Act;

(x) Old Age, survivors, and disability insurance benefits under title II of the Social Security Act;

(xi) Benefits under title XVIII of the Social Security Act

(xii) Aid to families with dependent children under a State plan approved under 402(a) of the Social Security Act;

(xiii) Medical assistance under a State plan approved under 1902(a) of the Social Security Act;

(xiv) Benefits under title XX of the Social Security Act;

(xv) Benefits under 336 of the Older Americans Act; or

(xvi) Benefits under the Low-Income Home Energy Assistance Act of 1981.

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

(d) No proof of specific intent to defraud is required to establish liability under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(f) In any case in which it is determined that more than one person is liable for making a claim under this section, and on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 16.4 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the information, records, or documents sought;

(2) The investigating official may designate a person to act on his behalf to receive the information, records, or documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or to the person designated to receive the information, records, or documents, a certification that the information, records, or documents sought have been produced, or that such information, records, or documents are not available and the reasons therefor, or that such information, records, or documents, suitably identified, have been withheld based upon the assertion of an identified legal privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall report the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit the investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act, 31 U.S.C. 3729–3731, or for other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to avoid interference with an investigation into criminal misconduct or a criminal prosecution.

(d) Nothing is this section modifies any responsibility of the investigating official to report violations of criminal law to the Attorney General.

§ 16.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 16.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 16.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 16.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value, if any, of property, services, or other benefits requested or demanded in violation of § 16.3 of this part; or, if no monetary value can be put on the property, service or benefit, a statement regarding the non-monetary consequences to the agency of a false statement.

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 16.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 16.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 16.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 16.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person, claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested, as long as the total amount for each claim does not exceed $150,000.

§ 16.7 Complaint.

(a) On or after the date the Attorney General or his designee approves the issuance of a complaint in accordance with 31 U.S.C. 3803 (b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 16.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by an attorney;

(4) That the defendant has a right to review and obtain certain information pursuant to Section 16.20 herein; and

(5) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint on the defendant(s), he or she shall serve the defendant with a copy of of these regulations.

§ 16.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his representative.

§ 16.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state whether the defendant has authorized an attorney to act as defendant's representative, and shall state the name, address, and telephone number of the representative.

§ 16.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 16.9(a), the reviewing official may refer the complaint to the ALJ for initial decision.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 16.8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to file a timely answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 16.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the intial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ, and serves a copy on the agency, seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing a timely answer, the initial decision shall be stayed pending the ALJ's decision on the motion. The ALJ shall permit the agency a reasonable amount of time, not les than 15 calendar days, to respond to the defendant's motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision, if such a decision has been issued pursuant to paragraph (c) of this secion, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 16.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously, and based solely on the record before the ALJ, whether extraordinary circumstances excuse the defendant's failure to file a timely answer.

(k) If the authority head decides that extraordinary circumstances excuse the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to file an answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

§ 16.11 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 16.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant and the agency representative in the manner prescribed by § 16.8.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The names, addresses, and telephone numbers of the representatives of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 16.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 16.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be an attorney employed anywhere in the Legal Division of the Department, or an attorney employed in the offices of either the investigating official or the reviewing official; however the representative of the Government may not participate or advise in the review of the initial decision by the authority head.

§16.15 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§16.16 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's assertion that personal bias or other reason for disqualification exists and the time and

circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f) (1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the agency shall seek to have the case promptly reassigned to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§16.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by an attorney;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§16.18 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to make any determinations regarding the validity of Federal statutes or regulations, or Departmental Orders, Directives, or other published rules.

§16.19 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or the content and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit ony documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 16.20 Disclosure of Documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 16.4(b) are based unless such documents are subject to a privilege under Federal law. The Department shall schedule such review at a time and place convenient to it. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 16.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 16.9.

§ 16.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 16.22 and 16.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data, either paper or electronic, and other documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ if it is not made available by another party on an informal basis. Such a motion shall be accompanied by a copy of the requested discovery, or in

the case of depositions, a summary of the scope of the proposed deposition, and a description of the efforts which have been made by the party to obtain discovery.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 16.24.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 16.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 16.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) each party shall bear its own costs of discovery.

§ 16.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 16.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause and that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 16.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to bring with him or her.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 16.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 16.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commerical information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 16.25 Fees.

The party requestingf a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when several, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

§ 16.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be a signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date or mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing,

serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of Service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 16.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sunday, and legal holidays observed by the Federal government shall be excluded from the computation. When the period of time allowed is more than seven days, all intervening calendar days are included in the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 16.28 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Excpet for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 16.29 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, reponse, brief or other document which is not filed in a timely fashion.

§ 16.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 16.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall have the burden of proving defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall have the burden of proving any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 16.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and upon appeal, the authority head, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, double damages and a significant civil penalty ordinarily should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations.

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct or employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect

to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

§ 16.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 16.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 16.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to—

(1) Make the interrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, as adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 16.34 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant, immaterial, or incompetent evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce reubuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 16.24.

§ 16.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 16.24.

§ 16.36 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the trascript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 16.37 Initial decision.

(a) The ALJ shall issue an initial decision, based solely on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 16.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 16.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final

decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 16.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) When a motion for reconsideration is made, the time periods for appeal to the authority head contained in § 16.38, and for finality of the initial decision in § 16.36(d), shall begin on the date of the ALJ issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

§ 16.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 16.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the notice of appeal and record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the agency may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head, prior to the issuance of the authority head's decision that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at the hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal to the ALJ with a copy of the decision of the authority head. At the same time the authority head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for judicial review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 16.3 is final and is not subject to judicial review.

§ 16.40 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. In such a case, the authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 16.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following an final decision of the authority head.

§ 16.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 16.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 16.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 16.42 or § 16.43, or any amount agreed upon in a compromise or settlement under § 16.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 16.45 Deposit in Treasury of United States.

Any amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 16.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 16.42 or during the

pendency of any action to collect penalties and assessments under § 16.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 16.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing and signed by all parties and their representatives.

§ 16.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 16.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 16.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The time limits of this statute of limitations may be extended by agreement of the parties.

Michael R. Hill,

Inspector General, United States Department of the Treasury.

May 26, 1987.

[FR Doc. 87-12676 Filed 6-8-87; 8:45 am]

BILLING CODE 4810-25-M

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31 CFR Part 103

Proposed Amendment to the Bank Secrecy Act Regarding Disclosure of Bank Secrecy Act Data

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Treasury proposes to clarify the regulation pertaining to disclosure of information reported under the Bank Secrecy Act and to add a new provision that would authorize charging of fees for costs incidental to certain disclosures to state and local government agencies.

DATE: Comments must be received on or before July 9, 1987.

ADDRESS: Address written comments to Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Rusch, Director, Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566-8022.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Pub. L. 91-508, as amended (codified at 31 U.S.C. 5311-5324, 12 U.S.C. 1829b, and 12 U.S.C. 1951-1959), empowers the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary of the Treasury determines have a high degree of usefulness in criminal, tax, or regulatory matters. *See* 31 USC 5311. The Secretary has the authority to make disclosures of information reported under the Bank Secrecy Act consistent with the purposes of the Act.

The regulations implementing the Bank Secrecy Act, 31 CFR Part 103, contain provisions setting forth some of the categories of authorized disclosures of information reported under the Bank Secrecy Act. 31 CFR 103.43(a) and (b). Treasury proposed to amend the regulations to make explicit the authority to disclose report information to the United States Congress consistent with the purposes of the Bank Secrecy Act, as set forth in proposed new paragraph 103.43(c). This authority is not specifically set forth in the current regulations. The proposed regulations also will make explicit the existing authority to make other types of disclosures of Bank Secrecy Act records where disclosure is consistent with the purposes of the Act.

One such authorized type of disclosure would be to states that have enacted cash reporting statutes similiar to the Bank Secrecy Act for equivalent law enforcement purposes. *See, e.g.,* California Monetary Instrument Transaction Reporting Law, Cal. Pen. Code sections 14160 *et seq.* Treasury will entertain requests by these states for disclosure of all Currency Transaction Report (CTR) information filed with Treasury, by financial institutions within the state that are subject to both state and Federal reporting requirements. Such a procedure has the potential for substantial savings to both the state and its financial institutions: The state would be relieved of the cost of initial processing of cash reporting forms and the state's financial institutions would be relieved of the burden of filing with the state.

The State of California has requested that the Treasury Department provide access to CTR data in order to ensure statewide compliance with its law and to permit it to exempt from state cash reporting requirements financial institutions that file reports with Treasury under the Bank Secrecy Act. The State of California cited in its request for this information the cost savings to California and its financial institutions. Treasury believes the disclosure requested by the State of California is permissible under the current law as an authorized disclosure consistent with the purposes of the Bank Secrecy Act and presents a fine opportunity for Federal and state cooperation in the fight against money laundering.

The Privacy Act, 5 U.S.C. 552a, does not bar the disclosure requested by the State of California and similar requests. The law enforcement exemption to the Privacy Act, 552a(b)(7), provides for disclosure to state agencies for a civil or criminal law enforcement activity, upon written request of the head of the agency for particular records, accompanied by a statement of the purposes for which they are sought. Disclosure to further enforcement of state bank secrecy laws clearly would come within this exemption.

Treasury also proposes to amend 31 CFR 103.43 to provide that the Secretary may impose a fee for costs incidental to disclosures of Bank Secrecy Act information to State and local agencies. Treasury would impose fees in accordance with the statute governing fees for government services, 31 U.S.C. 9701. Such fees will be charged only when disclosures are made on a routine basis, such as in the California situation, described above, and not when a state or local law enforcement agency makes a request for a limited number of records in connection with a particular case.

Executive Order 12291

This proposed rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of $100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any 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 foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified, under 5 U.S.C. 605(b), that this proposed rule will not, if

promulgated, have a significant economic impact on a substantial number of small entities. The only costs of this rule, if adopted, would be for reimbursement of Treasury costs by state or local government agencies requesting routine disclosure of Bank Secrecy Act data.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

Comments

Treasury requests comments from all interested persons concerning the proposed amendments. All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future action. The Treasury Department will not recognize any materials or comments, including the name of any person submitting comments, as confidential. Any material not intended to be disclosed to the public should not be included in comments. All comments submitted will be available for public inspection during the hours that the Treasury Library is open to the public. The Treasury Library is located in Room 5030, 1500 Pennsylvania Ave., NW, Washington, DC 20220. Appointments must be made to view the comments. Persons wishing to view the comments submitted should contact the Office of Financial Enforcement at the number listed above.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth in the preamble, 31 CFR Part 103 is proposed to be amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 is proposed to be revised to read as follows:

Authority: Pub. L. 91–508, Title I, 84 Stat. 1114, (12 U.S.C. 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5324).

2. It is proposed to amend § 103.43 by redesignating paragraphs (a), (b) and (c) as paragraphs (b), (d) and (e) respectively, revising newly redesignated paragraph (b), and adding new paragraphs (a), (c) and (f) to read as follows:

§ 103.43 Availability of information.

(a) The Secretary may within his discretion disclose information reported under this Part for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section.

(b) The Secretary may make any information set forth in any report received pursuant to this part available to another agency of the United States, to an agency of a state or local government or to an agency of a foreign government, upon the request of the head of such department or agency made in writing and stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

(c) The Secretary may make any information set forth in any report received pursuant to this part available to the Congress, or any committee or subcommittee thereof, upon a written request stating the particular information desired, the criminal, tax or regulatory purpose for which the information is sought, and the official need for the information.

* * * * *

(f) The Secretary may require that a state or local government department or agency requesting information under paragraph (b) of this section pay fees to reimburse the Department of the Treasury for costs incidental to such disclosure. The amount of such fees will be set in accordance with the statute on fees for government services, 31 U.S.C. 9701.

Dated: May 27, 1987.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 87–13041 Filed 6–8–87; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

38 CFR Part 1

Standards for Collection, Compromise, Suspension, or Termination of Collection Efforts and Referral of Civil Claims for Money or Property; Regional Office Committees on Waivers and Compromise.

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: In order to comply with recent legislative changes and revisions to General Accounting Office (GAO) and Department of Justice (DOJ) claims collection standards, the Veterans Administration (VA) proposes to amend current regulations on claims collection standards and compromise standards and to update authority for the consideration of a request for waiver of erroneous payments of travel, transportation and relocation expenses and allowances by Committees on Waivers and Compromises.

DATE: Comments must be received on or before July 9, 1987.

ADDRESSES: Interested persons are invited to send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. Comments will be available for inspection only in room 132, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 23, 1987.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, (202) 233–3405.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982, Pub. L. 97–365, amended the Federal Claims Collection Act. To comply with this legislation, GAO and the Department of Justice completely revised title 4 of the Code of Federal Regulations pertaining to the Federal Claims Collection Standards. The Debt Collection Act of 1982 enhanced the capability of Federal agencies to collect money or property owed to the Federal Government by giving new and broader authority to collect such debts. Some of this new authority, such as the charging of interest and administrative costs, referral of debtor information to consumer reporting agencies, and standards for administrative offset, had already been granted to the VA by Pub. L. 96–466, the Veterans Rehabilitation and Education Amendment of 1980. The VA has published regulations to implement this authority. However, many of the revisions of title 4 of the Code of Federal Regulations deal with technical changes for termination and suspension of collection action, referral of cases to GAO/Department of Justice, and new compromise standards.

In addition, the revisions to title 4 also contain new regulations required by the Debt Collection Act of 1982 for offset of Civil Service Retirement and the Federal Employees Retirement System (FERS) and standards for the use of Internal

Revenue Service (IRS) taxpayer mailing addresses, for which this agency currently does not have any regulations. As a result of these revisions to title 4, the VA believes that it is necessary for its regulations on claims collection and compromise standards to be updated. Pub. L. 99–224 (Dec. 28, 1985) amended the statutes (5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716) granting the Comptroller General and agency heads the authority to waive collection of erroneous payments made to civilian employees and members of the Armed Services. Prior to enactment of Pub. L. 99–224, waiver consideration was limited to erroneous payments of pay and allowances. With the enactment of this legislation, waiver authority has been expanded to include authority to waive erroneous payments of travel, transportation, and relocation expenses and allowances. This expanded authority applies only to overpayments made on or after December 28, 1985.

The Administrator hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these proposed rules primarily affect only individuals indebted to the United States Government as a result of either participation in programs administered by the VA or the erroneous payment of pay or allowances.

These proposed regulations have also been reviewed under E.O. 12291 and have been determined to be nonmajor because they will not have a $100 million annual effect on the economy and will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedures, Veterans.

Approved: April 20, 1987.

Thomas K. Turnage,

Administrator.

PART 1—[AMENDED]

38 CFR Part 1, GENERAL, is proposed to be amended as follows:

1. In § 1.900 the first sentence is revised to read as follows:

§ 1.900 Prescription of standards.

The instructions contained in §§ 1.900 through 1.954 are issued pursuant to the Federal Claims Collection Act (Pub. L. 89–508 and 97–365) and the joint regulations thereunder of the Comptroller General of the United States and the Attorney General of the United States, Title 4, Chapter II, Code of Federal Regulations.

* * * * *

2. Section 1.901 is revised to read as follows:

§ 1.901 Omissions not a defense.

The standards set forth in §§ 1.900 through 1.954 shall apply to VA handling of civil claims for money and property but the failure of the agency to comply with any provision of the standards shall not be available as a defense for any debtor.

3. Section 1.902 is revised to read as follows:

§ 1.902 Fraud, antitrust and tax claims excluded.

(a) The standards set forth in §§ 1.900 through 1.954 do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on violation of the antitrust laws. Only the Department of Justice has authority to compromise, suspend, or terminate collection action on such claims.

(b) Upon identification of a claim of any of the types described in paragraph (a) of this section (an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim), the VA shall refer the matter promptly to the Department of Justice. At its discretion, the Department of Justice may determine that no action is warranted and return the claim to the VA for further handling in accordance with §§ 1.900 through 1.954.

(c) The VA has no authority to consider or compromise Federal tax claims, as to which differing exemptions, administrative considerations, enforcement considerations, and statutes apply.

(d) Sections 1.900 through 1.954 do not apply to claims between Federal agencies. The VA shall attempt to resolve interagency claims by negotiation. Any unresolved claims shall be referred to the General Accounting Office (GAO) for final resolution.

(37 U.S.C. 3711)

4. In § 1.903, the first two sentences are revised to read as follows:

§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.

Nothing in §§ 1.900 through 1.954 is intended to preclude VA settlement, waiver, or compromise of claims under statutes other than the Federal Claims Collection Act. See, e.g. 38 U.S.C. 1820(a)(4) and (5) and 3102(a) and 42 U.S.C. 2651–2653.

* * * * *

5. Section 1.905 is revised to read as follows:

§ 1.905 Subdivision of claims not authorized.

Claims shall not be subdivided in order to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than $20,000, exclusive of interest and administrative costs, either for purposes of suspension or termination of collection action (§§ 1.940 through 1.943) or for determining the applicability of the $20,000 limit with respect to compromise (§§ 1.930 through 1.938). (31 U.S.C. 3711)

6. Section 1.907 is added to read as follows:

§ 1.907 Definitions.

(a) For the purpose of §§ 1.900 through 1.954, the terms "claims" and "debt" are synonymous and interchangeable. They refer to any amount of money or property which has been determined by an appropriate official of the VA to be owed to the United States by any person, organization or entity, except another Federal agency.

(b) A debt is considered delinquent if it has not been paid by the date specified in the initial written notice of indebtedness or applicable contractual agreement, unless other satisfactory payment arrangements have been previously made. A debt is also considered delinquent if the debtor fails to satisfy obligations under a repayment agreement with the VA.

(c) As used in §§ 1.900 through 1.954, "referral for litigation" means referral to the Department of Justice for appropriate legal actions, except in those specified instances where a case is referred to the VA District Counsel for legal action.

(31 U.S.C. 3701, 3711)

§ 1.911 [Removed]

7. Section 1.911 is removed.

§ 1.911a [Redesignated as § 1.911]

8. Section 1.911a is redesignated § 1.911.

§ 1.911 [Amended]

9. In § 1.911(a) remove the words "Chapter II" and add in their place the words "Part 102".

10. Section 1.912 is revised to read as follows:

§ 1.912 Collection by offset.

(a) *Authority and scope.* In accordance with Part 102 of Title 4 of the Code of Federal Regulations, the VA shall collect debts by administrative offset from any payments made by the VA to an individual indebted to the VA. This section does not pertain to offset from either current salary or from benefit payments, but does apply to offset from all other VA payments, including an employee's final salary check and lump-sum leave payment. Procedures for offset from benefit payments and current salary are found in § 1.912a and §§ 1.980 through 1.994.

Note: The VA cannot offset or refer for the purpose of offset, either under the authority of this section or under any other authority found in §§ 1.900 through 1.954 and §§ 1.980 through 1.984, any debt described in 38 U.S.C. 1826 unless the requirements set forth in that section have been met.

(b) *Notification.* Prior to initiation of administrative offset, if not provided in the initial notice of indebtedness, the VA is required to provide the debtor with written notice of:

(1) The nature and amount of the debt;

(2) The VA's intention to pursue collection by offset procedures from the specified VA payment, the date of commencement of offset, and the exact amount to be offset;

(3) The opportunity to inspect and copy VA records pertaining to the debt;

(4) The right to contest either the existence or amount of the debt or the proposed offset schedule, or if applicable, to request a waiver of collection of the debt, or to request a hearing on any of these matters;

(5) That commencement of offset will begin, unless the debtor makes a written request for the administrative relief discussed in paragraph (b)(4) of this section within 30 days of the date of this notice; and

(6) The opportunity to enter into a written agreement with the VA to repay the debt in lieu of offset.

(c) *Deferral of offset.* (1) If the debtor, within 30 days of the date of the notification required by paragraph (b) of this section, disputes in writing the existence or amount of the debt or the amount of the scheduled offset, offset shall not commence until the dispute is reviewed and a decision is rendered by the VA adverse to the debtor.

(2) If the debtor, within 30 days of the date of the required notification by the VA, requests in writing the waiver of collection of the debt in accordance with §§ 1.963 or 1.964, offset shall not commence until the VA has made an initial decision to deny the waiver request.

(3) If the debtor, within 30 days of the required notification by the VA, requests in writing a hearing on the issues found in paragraphs (c) (1) and (2) of this section, offset shall not commence until a decision is rendered by the VA on the issue which is the basis of the hearing.

(d) *Exceptions.* (1) Offset may commence prior to either resolution of a dispute or decision on a waiver request as discussed in paragraph (c) of this section, if collection of the debt would be jeopardized by deferral of offset. In such a case, notification pursuant to paragraph (b) of this section shall be made at the time offset begins or as soon thereafter as possible.

(2) If the United States has obtained a judgment against the debtor, offset may commence without the notification required by paragraph (b) of this section. However, a waiver request filed in accordance with the time limits and other requirements of §§ 1.963 or 1.964 will be considered, even if filed after a judgment has been obtained against the debtor. If waiver is granted, in whole or in part, refund of amounts already collected will be made in accordance with § 1.967.

(e) *Hearing.* (1) After a debtor requests a hearing, the VA shall notify the debtor of the form of the hearing to be provided; i.e., whether the hearing will either be oral or paper. If an oral hearing is determined to be proper by the hearing official, the notice shall set forth the date, time, and location of the hearing. If the hearing is to be a paper review, the debtor shall be notified that he or she should submit his or her position and arguments in writing to the hearing official by a specified date, after which the record shall be closed. This date shall give the debtor reasonable time to submit this information.

(2) Unless otherwise required by law, an oral hearing under this paragraph is not required to be a formal evidentiary type of hearing.

(3) A debtor who requests a hearing shall be provided an oral hearing if the VA determines that the matter cannot be resolved by review of documentary evidence. Whenever an issue of credibility or veracity is involved, an oral hearing will always be provided the debtor. For example, the credibility or veracity of a debtor is always an issue whenever the debtor requests a waiver of collection of the debt. Thus, a hearing held in conjunction with a waiver request will always be an oral hearing. If a determination is made to provide an oral hearing, the hearing official may offer the debtor the opportunity for a hearing by telephone conference call. If this offer is rejected or if the hearing official declines to offer a telephone conference call, the debtor shall be provided an oral hearing permitting the personal appearance of the debtor, his or her personal representative, and witnesses. Witnesses shall testify under oath or affirmation.

(4) In all other cases where a debtor requests a hearing, a paper hearing shall be provided. The debtor shall be provided an opportunity to submit material for the record. A paper hearing shall consist of a review of the written evidence of record by the designated hearing official.

(f) When collecting multiple debts by administrative offset, the VA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation. In accordance with 4 CFR 102.3(b)(3), the VA may not initiate offset to collect a debt more than 10 years after the VA's right to collect the debt first accrued (with certain exceptions as explained in § 102.3(b)(3)).

(31 U.S.C. 3716)

11. In § 1.912a, the heading and paragraph (a) are revised to read as follows:

§ 1.912a Collection by offset—from VA benefit payments.

(a) *Authority and scope.* The VA shall collect debts governed by 38 U.S.C. 3101(c) and § 1.911 by offset against any current or future VA benefit payments to the debtor. Unless paragraphs (c) or (d) of this section apply, offset shall commence promptly after notification to the debtor as provided in paragraph (b) of this section. The collection by offset of all other debts is governed by Part 102, Chapter II, of Title 4, Code of Federal Regulations, and § 1.912.

* * * * *

12. Section 1.916 is revised to read as follows:

§ 1.916 Liquidation of collateral.

The VA will exercise its rights to liquidate security or collateral and apply the proceeds to debts due it through use of a power of sale in the security instrument or a non-judicial foreclosure if the debtor fails to pay his or her debt, within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or the particular circumstances require judicial foreclosure. The VA must provide the debtor with reasonable notice of the sale, and an accounting of any surplus proceeds, as well as notice of any other procedures required by law or contract. Collection from other sources, including liquidation of security collateral, is not a prerequisite to requiring payment by a surety or insurance company unless such action is expressly required by statute or contract.

(31 U.S.C. 3711)

13. Section 1.917 is revised to read as follows:

§ 1.917 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the VA together with any interest and administrative costs assessed under § 1.919, shall be collected in full in one lump sum. Collection in one lump sum is applicable whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, payments may be accepted in regular installments when the debtor is financially unable to pay the debt in one lump sum.

(b) In agreeing to accept regular installment payments to liquidate an outstanding indebtedness, the VA shall obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement and which contains a provision accelerating the debt in the event that the debtor defaults. The size and frequency of installment payments should bear a reasonable relationship to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $50 per month shall be accepted only if justified on the grounds of financial hardship or for some other reasonable cause.

(c) If the VA is holding an unsecured claim for administrative collection, it shall attempt to obtain from a debtor an executed confess-judgment note in States and jurisdictions where permitted, using Department of Justice Form USA-70a, or another appropriate Department of Justice form, whenever the total amount of the deferred installments will exceed $750. Such notes may also be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, the VA shall provide debtors with a written explanation of the consequences of signing the note, and shall maintain sufficient documentation to demonstrate that the debtor signed the note knowingly and voluntarily. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. The VA may accept installment payments even if the debtor refuses to execute a confess-judgment note or to give other security.

(d) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among these debts, that designation must be followed by the VA. If the debtor does not designate the application of the payment, the VA shall apply payments to the various debts in accordance with the best interests of the Government as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

(31 U.S.C. 3711)

14. Section 1.918 is revised to read as follows:

§ 1.918 Exploration of compromise.

The VA will attempt to affect compromises, preferably during the course of personal interviews, in accordance with the standards set forth in §§ 1.930 through 1.939 in all cases in which it is ascertained that the debtor is financially unable to pay the full amount or in which the litigative risks or the costs of litigation dictate such action.

15. In § 1.919, paragraphs (a), (c), (e), and (f) are revised to read as follows:

§ 1.919 Interest.

(a) Except as otherwise provided by statute, contract, or other regulation to the contrary, the VA shall assess: (1) Interest on all indebtedness to the United States arising as a result of participation in VA benefit programs which are being paid in installments, (2) interest and administrative costs of collection on debts where repayment has become delinquent, and (3) interest, penalties, and administrative costs on all nonbenefit debts in accordance with 4 CFR 102.13.

* * * * *

(c) The rate of interest charged by the VA shall be based on the rate paid by the United States for its borrowing as published in the Treasury's Cash Management Regulations (ITFM 6–8000). The rate of interest shall be adjusted annually on the first day of the calendar year to reflect the average rate being charged in accordance with the Treasury's Cash Management Regulations. Once the rate of interest has been determined for a particular debt, the rate shall remain unchanged throughout the duration of repayment of that debt.

* * * * *

(e) Interest under this section shall not be charged if the debt is paid in full within 30 days of mailing of the initial notice described in paragraph (b) of this section. Once interest begins to accrue, and after expiration of the time period for payment of the debt in full to avoid assessment of interest and administrative costs, any amount received toward the payment of such debt shall be first applied to payment of outstanding administrative cost charges and then to accrued interest or costs, and then to principal, unless a different rule is prescribed by statute, contract, or other regulation.

(f) All or any part of the interest and administrative costs assessed under this section are subject to consideration for waiver under section 3102 of title 38, United States Code, and appropriate administrative procedures.

(1) In general, interest and administrative costs may be waived only when the principal of the debt on which they are assessed is waived by a Committee on Waivers and Compromises. However, the VA may forbear collection of interest and administrative costs, exclusive of collection of the principal of the debt on which they are assessed, as well as terminate further assessment of interest and administrative costs when the collection of such interest and costs are determined to be not in the government's best interest. Collection of interest and administrative costs shall not be considered to be in the best interest of the government when the amount of assessed interest and administrative cost is so large that there is a reasonable certainty that the original debt will never be repaid. The determination to forbear collection of interest and administrative cost, exclusive of collection of the principal of the debt, shall be made by the Chief of the Fiscal activity at the station responsible for the collection of the debt. Such a determination is not within the jurisdiction of a Committee on Waivers and Compromises.

(2) When a debtor requests a waiver of collection of the indebtedness,

interest and administrative costs shall not be assessed until either

(i) A Committee on Waivers and Compromises has considered the request and rendered an initial decision, or

(ii) The applicable time limit for requesting waiver, as stated in 5 U.S.C. 5584 or 38 U.S.C. 3102, has expired and the debtor, after notice in accordance with § 1.911, has not made such a request. This subsection does not apply to debts resulting from participation in the loan program administered under Chapter 37 of title 38 of the United States Code.

(38 U.S.C. 3102, 3115)

* * * * *

16. In § 1.922, paragraphs (a)(1), (c), and (d)(2)(i) are revised to read as follows:

§ 1.922 Disclosure of debt information to consumer reporting agencies (CRAs).

(a) * * *

(1) Obtaining the location of an individual indebted to the United States as a result of participation in any benefits program administered by the VA or indebted in any other manner to the VA;

* * * * *

(c) Subject to the conditions set forth in paragraph (d) of this section, information concerning individuals may be disclosed to consumer reporting agencies for inclusion in consumer reports pertaining to the individual, or for the purpose of locating the individual. Disclosure of the fact of indebtedness will be made if the individual fails to respond in accordance with written demands for repayment, or refuses to repay a debt to the United States. In making any disclosure under this section, the VA will provide consumer reporting agencies with sufficient information to identify the individual, including the individual's name, address, if known, date of birth, VA file number, and Social Security number. * * *

* * * * *

(d) * * *

(2)(i) The VA will notify each individual of the right to dispute the existence or amount of any debt in accordance with §§ 3.101(e) and 19.109, and to request a waiver of the debt in accordance with §§ 1.955 through 1.970 if applicable.

* * * * *

17. Sections 1.923, 1.924, 1.925, 1.926, 1.927, and 1.928 are added to read as follows:

§ 1.923 Contracting for collection services.

(a) The VA has authority to contract for collection services to recover delinquent debts, provided that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection and refer the matter for litigation shall be retained by the VA;

(2) The contractor shall be subject to 38 U.S.C. 3301, and to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq;

(3) The contractor shall be required to strictly account for all amounts collected;

(4) Upon returning an account to the VA for subsequent referral to the Department of Justice for litigation, the contractor must agree to provide any data contained in its files relating to § 1.951.

(b) *Funding of collection service contracts.* (1) The VA may fund a collection service contract on a fixed-fee basis (i.e., payment of a fixed fee determined without regard to the amount actually collected under the contract). Payment of the fee under this type of contract must be charged to available appropriations;

(2) The VA may also fund a collection service contract on a contingent-fee basis (i.e., by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract). The fee should be based upon a percentage of the amount collected, consistent with prevailing commercial practice;

(3) The VA may enter into a contract under paragraph (b)(1) of this section only if and to the extent that funding for the contract is provided for in advance by an appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute.

(4) Except as authorized under paragraphs (b)(2) and (b)(5) of this section, or unless otherwise specifically provided by law, the VA shall deposit all amounts recovered under collection service contracts for Loan Guaranty debts into the Loan Guaranty Revolving Fund, and for all other debts in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(5) For benefit overpayments recovered under collection service contract, the VA, pursuant to 31 U.S.C. 3302, shall deposit:

(i) Amounts equal to the original overpayments in the appropriations account from which the overpayments were made, and

(ii) Amount of interest or administrative costs in the Treasury as miscellaneous receipts.

(31 U.S.C. 3718)

§ 1.924 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt in accordance with §§ 1.900 through 1.954, the VA may send a request to the Secretary of the Treasury, or his/her designee, in order to obtain the debtor's most current mailing address from the records of the Internal Revenue Service.

(b) The VA may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors hired by the VA, in order to facilitate the collection or compromise of debts. A mailing address obtained under paragraph (a) of this section may be disclosed to a consumer reporting agency under authority of § 1.922 only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) The VA will insure that procedures established under this section comply with the Privacy Act (5 U.S.C. 552a) and the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

(31 U.S.C. 3711)

§ 1.925 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, Federal Employees Retirement System (FERS), final salary check, and lump sum leave payments.

(a) Unless otherwise prohibited by law or regulation, the VA may request that money which is due and payable to a debtor from either the Civil Service Retirement and Disability Fund or the Federal Employees Retirement System (FERS) be administratively offset in reasonable amounts in order to collect, in one full payment or a minimal number of payments, debts that are owed to the VA by the debtor. Such requests shall be made to the appropriate officials at the Office of Personnel Management in accordance with such regulations prescribed by the Director of that Office. See 5 CFR Part 831, Subpart R (§§ 831.1801 through 831.1808) and Part 845, Subpart O (§§ 845.401 through 408). In addition, the VA may also offset against a Federal employee's final salary check and lump sum leave

payment, unless they represent continuation of an offset against current salary initiated in accordance with §§ 1.980 through 1.994.

(b) When making a request to the Office of Personnel Management for administrative offset under paragraph (a) of this section, the VA shall include a written certification that:

(1) The debtor owes the VA a debt, including the amount of the debt;

(2) The VA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The VA has complied with §§ 1.911, 1.912, 1.912a, or 4 CFR 102.3 including any required hearing or review.

(c) Once the VA decides to request adminstrative offset from the Civil Service Retirement and Disability Fund or Federal Employees Retirement System (FERS) under paragraph (a) of this section, it shall make the request as soon as possible after completion of the applicable procedures in order that the Office of Personnel Management may identify the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund or FERS. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statutes of limitations. At such time as the debtor makes a claim for payments from the Fund or FERS, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that such offset will create financial hardship.

(d) If the VA collects all or part of the debt by other means before deductions are made or completed in accordance with paragraph (a) of this section, the VA shall promptly act to modify or terminate its request for offset under paragraph (a) of this section.

(e) The Office of Personnel Management is neither required nor authorized by this section to review the merits of the VA's determination with respect to the amount and validity of the debt, waiver under 5 U.S.C. 5584 or 38 U.S.C. 3102, or providing or not providing an oral hearing.

(5 U.S.C. 8461; 31 U.S.C. 3711, 3716)

§ 1.926 Referral of VA debts.

(a) When authorized, the VA may refer an uncollectable debt to another Federal or State agency for the purpose of offsetting the debt from any payment, except salary (see paragraph (e) of this section), made by such agency to the person indebted to the VA.

(b) The VA must certify in writing that the individual owes the debt, the amount and basis of the debt, the date on which payment became due, and the date the VA's right to collect the debt first accrued.

(c) This certification will also state that the VA provided the debtor with written notice of:

(1) The nature and amount of the debt;

(2) The VA's intention to pursue collection by offset procedures;

(3) The opportunity to inspect and copy VA records pertaining to the debt;

(4) The right to contest both the existence and amount of the debt and to request a waiver of collection of the debt (if applicable), as well as the right to a hearing on both matters;

(5) The opportunity to enter into written agreement with the VA for the repayment of the debt; and

(6) Other applicable notices required by §§ 1.911, 1.912, and 1.912a.

(d) The written certification required by paragraphs (b) and (c) of this section will also contain (for all debts) a listing of all actions taken by both the VA and the debtor subsequent to the notice, as well as the dates of such actions.

(e) The referral by the VA of a VA debt to another agency for the purposes of salary offset shall be done in accordance with 5 CFR 550.1106.

(31 U.S.C. 3711)

§ 1.927 Analysis of costs and prevention of debts.

(a) VA collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and various dollar ranges should be used to compare the cost effectiveness of alternative collection procedures, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating compromise offers, and establish minimum debt amounts below which collection efforts need not be taken. Costs and recovery data should also be useful in justifying adequate resources for an effective collection program, evaluating the feasibility and cost effectiveness of contracting for consumer reporting agencies' services (§ 1.922), collection services (§ 1.923), and for determining appropriate charges for administrative costs (§ 1.919).

(b) The VA shall insure that adequate procedures are established which both identify the causes of overpayments, delinquencies, and defaults and also describe the actions necessary to correct such problems.

(31 U.S.C. 3711 through 3719)

§ 1.928 Exemptions.

(a) Sections 1.900 through 1.954 do not apply to debts arising under, or to payments made under, the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or tariff laws of the United States. However, the remedies and procedures described in §§ 1.900 through 1.954 are still authorized with respect to debts which are exempt from the purview of the Debt Collection Act of 1982, to the extent that they are authorized under some other statute or common law.

(b) This section shall not be construed as prohibiting the use of §§ 1.900 through 1.954 when the VA attempts to collect debts owed to this agency by persons employed by the agencies administering the laws cited in paragraph (a) of this section.

(31 U.S.C. 3711)

18. Section 1.930 is revised to read as follows:

§ 1.930 Scope and application.

(a) The standards set forth in §§ 1.930 through 1.938 apply to the compromise of claims in accordance with 31 U.S.C. 3711. The VA may exercise such compromise authority where the claim owed to the VA does not exceed $20,000, exculsive of interest or administrative costs. This $20,000 limit does not apply to debts which arise out of participation in the loan program under Chapter 37 of Title 38 of the United States Code. The Comptroller General or his/her designee may exercise compromise authority with respect to claims referred to the General Accounting Office (GAO). Only the Comptroller Geneal or his/her designee may compromise a claim that arises out of an exception made by the GAO in the account of an accountable officer, including a claim against the payer, prior to its referral by the GAO to the Department of Justice for litigation.

(b) When the claim exceeds $20,000, exclusive of interest and administrative costs, the authority to accept a compromise offer rests solely with the Department of Justice. However, approval by the Department of Justice is not required if the VA wishes to reject a compromise offer on a debt in excess of $20,000. If the VA believes that the compromise offer on a debt in excess of $20,000 should be accepted, it shall refer the matter to the Department of Justice by using the Claims Collection Litigation Report (§ 1.951). If the gross amount of the claim is in excess of $100,000, then the claim will be referred to the Commercial Litigation Branch, Civil Division, Department of Justice,

Washington, DC 20530. If the gross amount of the claim is $100,000 or less, such claims will be referred to the U.S. Attorney in whose judicial district the debtor can be found. The referral should contain a written memorandum by the local Committee on Waivers and Compromises specifying the exact reason why it is believed that the compromise offer should be accepted.

(31 U.S.C. 3711)

19. Section 1.931 is revised to read as follows:

§ 1.931 Inability to pay.

(a) A claim may be compromised by the VA pursuant to §§ 1.930 through 1.938 if the VA cannot collect the full amount of the debt because of:

(1) The debtor's inability to pay the full amount of the debt within a reasonable amount of time; or

(2) The refusal of the debtor to pay the claim in full and the inability of the VA to collect the debt in full within a reasonable time by means of enforced collection.

(b) In determining the debtor's ability to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income which may be realized by means of enforced collection procedures.

(c) The VA will give consideration to the applicable exemptions available to the debtor under various State and Federal laws in determining the ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at a forced sale may be properly considered in determining the ability to enforce collection. A compromise effected under §§ 1.930 through 1.938 should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time in which collection will take place.

(d) The payment of a compromise in installments is to be discouraged. However, if payment of a compromise in installments is necessary, then a legally enforceable agreement shall be obtained from the debtor for the reinstatement of the original amount of the indebtedness, less any amounts paid there on by the debtor, and also an acceleration of the balance due upon default. Such an agreement, together with security as described in § 1.917, should be obtained in every case possible.

(e) If the VA files do not contain recent credit information as a basis for assessing a compromise proposal, such information shall be obtained from the debtor by obtaining a statement, executed under penalty of perjury, showing the debtor's assets and liabilities, income and expenses. Forms such as VA Form 4–5655 "Financial Status Report" or Department of Justice Forms OBD–500 or OBD–500B shall be used to obtain this information. Similar data may be obtained from corporate debtors by using a form, such as Department of Justice Form OBD–500C or by resort to balance sheets and such additional data as may be required.

(31 U.S.C. 3711)

20. Section 1.932 is revised to read as follows:

§ 1.932 Litigative possibilities.

The VA will attempt to compromise claims when there is a real doubt as to the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or bona fide dispute as to the facts. The amount accepted in compromise will fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight will be given the court costs and attorney fees which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. (See 28 U.S.C. 2412.)

21. Section 1.934 is redesignated as § 1.935; § 1.935 is redesignated as § 1.936; § 1.936 is redesignated as § 1.937; and § 1.937 is redesignated as § 1.938. New § 1.934 is added to read as follows:

§ 1.934 Enforcement policy.

Statutory penalties, interest, and administrative costs which are established as an aid to enforcement and to compel compliance may be compromised pursuant to §§ 1.930 through 1.938. However, such additional costs on debts will be considered for compromise only in connection with compromise of the total amount of the debt [original amount of debt plus interest and costs]. Interest, administrative costs, and other additional costs will never be considered for compromise separately or exclusively from the original amounts of the debt.

(31 U.S.C. 3711)

22. Section 1.935 is revised to read as follows:

§ 1.935 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. The VA shall not attempt to allocate the burden of paying such claims as between the debtors, but shall proceed to liquidate the indebtedness as quickly as possible. Proper measures shall be taken to insure that compromise with one such debtor does not release the VA's claim against the remaining debtor. The amount of a compromise accepted from one debtor shall not be considered as a precedent or as morally binding in determining the amount which will be required from the other debtor held to be jointly and severally liable on the claim.

(31 U.S.C. 3711)

23. Section 1.937 is revised to read as follows:

§ 1.937 Further review of compromise offers.

The VA may refer to the GAO or Department of Justice firm written offers, plus supporting data, from debtors when there is doubt whether the offers should be accepted.

24. Section 1.938 is revised to read as follows:

§ 1.938 Restrictions.

The VA will not accept either a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim. In negotiating a compromise with a business concern, consideration shall be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

25. Section 1.940 is revised to read as follows:

§ 1.940 Scope and application.

(a) The standards set forth in §§ 1.940 through 1.943 apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which to do not exceed $20,000, exclusive of interest, penalties (if applicable), and administrative costs, after deducting the amount of partial payments or collections, if any. The VA may suspend or terminate collection action under §§ 1.940 through 1.943 with respect to claims for money or property arising out of this agency's activities prior to the referral of such claims to the GAO or to

the Department of Justice for litigation. The Comptroller General may exercise such authority with respect to such claims referred to the GAO by the VA prior to their further referral to the Department of Justice for litigation.

(b) If after deducting the amount of any partial payments or collections, a claim exceeds $20,000, exclusive of interest and administrative costs, then the authority to suspend or terminate further collection action rests solely with the Department of Justice. If the VA determines that suspension or termination is appropriate for such a debt, after evaluation in accordance with the standard set forth in §§ 1.941 and 1.942, then the matter shall be referred to the Department of Justice, using the Claims Collection Litigation Report (See § 1.951). The referral shall contain a written recommendation, which specifies the reasons why suspension or termination is advantageous to the government. If the VA determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the concurrence of the Department of Justice.

(31 U.S.C. 3711)

26. Section 1.941 is revised to read as follows:

§ 1.941 Suspension of collection activity.

(a) Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim. The following sources shall be used to locate missing debtors: Telephone directories, city directories, postmasters, drivers license records, automobile title and registration records, State and local government agencies, the Internal Revenue Service (§ 1.924), other Federal agencies, employers, relatives, credit agency locate reports, and credit bureaus. Suspension as to a particular debtor should not prohibit the early liquidation of any security held for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of any applicable statute of limitations, in order to permit the timely filing of a suit, if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of his/her missing status.

(b) Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payments on the debt owed to the VA or effect a compromise at the time, but his/her future prospects justify retention of the claim for periodic review and action, and:

(1) The applicable statute of limitations has been tolled or started running again, or

(2) Future collection can be affected by offset, notwithstanding the statute of limitations, with due regard to the 10 year limitation prescribed by 31 U.S.C. 3716(c)(1), or

(3) The debtor agrees to pay interest on the amount of the debt on which collection action has been suspended temporarily, and such temporary suspension is likely to enhance the debtor's ability to pay the debt in full, with interest, at a later time.

(c) Collection action may also be suspended, in accordance with §§ 1.911,1.912, and 1.912a, pending agency action on requests for administrative review or waiver.

(31 U.S.C. 3711)

27. In § 1.942, paragraphs (a), (c) and (f) are revised to read as follows:

§ 1.942 Termination of collection activity.

* * * * *

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the VA cannot collect or enforce collection of any significant amount from the debtor, having due regard for the judicial remedies available to the agency, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, shall be considered: age and health of the debtor, present and potential income, inheritance prospects, the possibility that assets have been concealed or improperly transferred by the debtor, the availability of assets or income which may be realized by means of enforced collection proceedings.

* * * * *

(c) *Death of debtor.* The debtor is determined to be deceased and the Government has no prospect of collection from his/her estate.

* * * * *

(f) *Claim cannot be substantiated by evidence.* The VA will terminate collection action on once asserted claims because of lack of evidence or unavailability of witnesses only in cases where efforts to induce voluntary payment are unsuccessful.

28. Section 1.943 is revised to read as follows:

§ 1.943 Transfer of claims.

When the VA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the GAO for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a government sponsored program, the VA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration. Claims on which the VA holds a judgment by assignment or otherwise shall be referred to the Department of Justice for further actions if renewal of the judgment lien or enforced collection proceedings are justified, except where the VA has authority for handling its own litigation.

(31 U.S.C. 3711)

29. The center heading between §§ 1.943 and 1.950 is revised to read as follows:

Referrals to GAO, Department of Justice, or IRS

30. Section 1.950 is revised to read as follows:

§ 1.950 Prompt referral.

(a) Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken and which cannot be compromised, or on which collection action cannot be suspended or terminated, shall be promptly referred to the Department of Justice for litigation. Claims for which the gross original amount is over $100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made an early as possible, consistent with aggressive collection action and the observance of §§ 1.900 through 1.954, and well within the time period for bringing a suit against the debtor. Ordinarily, such referrals should be made within one year of the VA's final determination of the fact and amount of the debt.

(b) Claims arising from audit exceptions taken by the GAO to payments made by the VA must be referred to the GAO for review and

approval, prior to referral to the Department of Justice, unless the VA has been granted an exception by the GAO.

(c) When the merits of the VA claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or temination are in doubt, the Veterans Administration shall refer the matter to the GAO for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to the GAO for the Department of Justice pursuant to this section, the VA shall refrain from having any contract with the debtor and shall direct the debtor to the GAO or the Department of Justice, as appropriate, when questions concerning the claim or a request for waiver of the claim are raised by the debtor. The GAO or the Department of Justice, as appropriate, shall be immediately notified by the VA of any payments or requests for administrative remedies, such as waiver, which are received by this agency from the debtor subsequent to referral of a claim under this section.

(e) In accordance with procedures set forth in 26 CFR Part 301, information pertaining to past-due, legally enforceable debts owed to the VA may be referred to the Internal Revenue Service by the VA for the purpose of collection of such debts by means of tax refund offset.

(31 U.S.C. 3711)

31. Section 1.951 is revised to read as follows:

§ 1.951 Claims Collection Litigation Report.

(a) Unless an exception is granted by the Department of Justice, the Claims Collection Litigation Report (CCLR) shall be used with all referrals of administratively uncollectible claims made pursuant to § 1.950. As required by the CCLR, the following information shall be included:

(1) *Report of prior collection actions.* A checklist or brief summary of the actions taken to collect or compromise the claim will be forwarded with the claim upon its referral. If any of the administrative collection actions described in §§ 1.9001 through 1.954 have been omitted, the reasons for their omission must be provided. The Department of Justice or GAO may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions.

(2) *Current address of the debtor.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made, shall be provided. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice, in which the current address of any party is unknown, shall be accompanied by a listing of the prior known address of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* Current credit data, when applicable, indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and judicial remedies available to the government, shall be included:

(i) Such credit data may take the form of:

(A) A commercial credit report;

(B) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(C) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(D) An audited balance sheet of a corporate debtor.

(ii) Such credit data may be omitted if:

(A) A surety bond is available in an amount sufficient to satisfy the claim in full;

(B) The forced sale value of the security available for application to the VA claim is sufficient to satisfy the claim in full;

(C) The VA wishes to liquidate the loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(D) The debtor is in bankruptcy or receivership;

(E) The debtor's liability to the VA is fully covered by insurance, in which case the VA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage;

(F) The nature of the debtor is such that credit data is not normally available or cannot reasonably be obtained; or

(G) Where it is clearly irrelevant to the Government's case.

(b) The VA shall also use the Claims Collection Litigation Report (CCLR) when referring claims to the Department of Justice in order to obtain approval of that department with respect to compromise, suspension, or termination.

(31 U.S.C. 3711)

32. Section 1.952 is revised to read as follows:

§ 1.952 Preservation of evidence.

Care shall be taken to preserve all files, records, and exhibits on claims referred to or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or to the U.S. Attorney without their specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

(31 U.S.C. 3711)

33. Section 1.953 is revised to read as follows:

§ 1.953 Minimum amount of referrals to the Department of Justice.

The VA shall not refer claims of less than $600, exclusive of interest, penalties (if applicable), and administrative costs, for litigation unless:

(a) Referral is important to a significant enforcement policy, or

(b) The debtor not only has the clear ability to pay the claim but the government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the government.

(31 U.S.C. 3711)

34. Section 1.954 is revised to read as follows:

§ 1.954 Preliminary referrals to GAO.

As required by § 1.950, preliminary referrals to the Government Accounting Office (GAO) will be in accordance with instructions, including monetary limitations, contained in the "General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies".

§ 1.955 [Amended]

35. In 38 CFR 1.955(a)(1), remove the words "31 U.S.C. 951–953" and add, in their place, the words "31 U.S.C. 3711".

§ 1.957 [Amended]

36. In 38 CFR 1.957(a)(2)(ii), remove the words "31 U.S.C. 951–953" and add, in their place, the words "31 U.S.C. 3711".

37. In § 1.957, paragraphs (a)(2)(ii)(B), (b), and (b)(1) are revised and paragraphs (a)(2)(ii) (C) and (D) are added to read as follows:

§ 1.957 Committee authority.

* * * * *

(2) * * *
(ii) * * *

(B) Accept or reject a compromise offer on a debt of $1,000 or less, exclusive of interest, which is not disposed of by the Chief, Fiscal activity, pursuant to paragraph (b) of this section.

(C) Reject a compromise offer on a debt which exceeds $20,000, exclusive of interest or administrative costs.

(D) Recommend approval of a compromise offer on a debt which exceeds $20,000, exclusive of interest and administrative costs. The authority to accept a compromise offer on such a debt rests solely within the jurisdiction of the Department of Justice. The Committee should evaluate a compromise offer on a debt in excess of $20,000, using the factors set forth in §§ 1.930 through 1.938. If the Committee believes that the compromise is advantageous to the government, then the Committee members shall so state this conclusion in a written memorandum of recommendation of approval to the Chairperson. This recommendation, along with a Claims Collection Litigation Report (CCLR) completed in accordance with § 1.951, will be referred to the Department of Justice for final approval.

(31 U.S.C. 3711).

* * * * *

(b) *Chief of Fiscal Activity.* The Chief of the Fiscal activity at both DVB and DM&S offices has authority as to debts arising within his/her jurisdiction, to:

(1) Suspend or terminate collection action on all debts which do not exceed $20,000 exclusive of interest and administrative costs, after deducting the amount of any payments or collections.

* * * * *

38. In § 1.962, paragraph (b) is revised to read as follows:

§ 1.962 Waiver of overpayment.

* * * * *

(b) In any case where there is an indication of fraud or misrepresentation of a material fact on the part of the debtor or any other party having an interest in the claim, action on a request for waiver will be deferred pending appropriate disposition of the matter. However, the existence of a prima facie case of fraud shall, nevertheless, entitle a claimant to an opportunity to make a rebuttal with countervailing evidence; similarly, the misrepresentation must be more than non-willful or mere inadvertence. The Committee may act on a request for waiver concerning such debts, after the Inspector General or the District Counsel has determined that prosecution is not indicated, or the Department of Justice has notified the VA that the alleged fraud or misrepresentation does not warrant action by that department, or the Department of Justice or the appropriate United States Attorney, specifically authorized action on the request for waiver. (38 U.S.C. 210(c)(1))

39. In § 1.963a, the last sentence in paragraph (a) and the first sentence in paragraph (b) are revised to read as follows:

§ 1.963a Waiver—erroneous payment of pay and allowances.

(a) * * * It also includes expenses of travel and transportation or expenses of transportation of household goods.

(b) Allowances as they relate to an employee include, but are not limited to, payments for quarters, uniforms, and overseas cost of living expenses, as well as travel and transportation expenses and relocation allowances. * * *

* * * * *

[FR Doc. 87-13075 Filed 6-8-87; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 21

Dependents' Education; Effect of the 85–15 Percent Ratio Requirement

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The law and the Code of Federal Regulations (38 CFR 21.4201) prohibit the Veterans Administration (VA) from approving new enrollments under many of the education programs which the VA administers when the VA or the educational institutin pays all or part of the tuition, fees, or other charges to or for 85 percent or more of the students enrolled. The Code of Federal Regulations includes students receiving benefits under the Survivors' and Dependents' Educational Assistance program as being subject to this restriction. A review of the Code of Federal Regulations revealed that this restriction is not required by law as to these beneficiaries. Accordingly, the VA is proposing to lift the prohibition which exists in 38 CFR 21.4201 for the students eligible to receive benefits under the Survivors' and Dependents' Educational Assistance program.

DATES: Comments must be received on or before July 10, 1987.

ADDRESSES: Send written comments to: Administration of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 24, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2092.

SUPPLEMENTARY INFORMATION: 38 CFR 21.4201(g) is proposed to be amended to eliminate 38 U.S.C. 35 (Survivors' and Dependents' Educational Assistance) from the list of programs to which beneficiaries are subject to the 85–15 percent ratio requirement. In computing the 85–15 percent ratio for all programs, students receiving benefits under the Survivors' and Dependents' Educational Assistance program are included. However, for purposes of receipt of educational benefits, the beneficiaries under the Survivors' and Dependents' Educational Assistance program are not themselves subject to the requirement that the course shall meet the ratio. The existing regulation erroneously applies the ratio to students under that program.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have 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.

The Administrator of Veterans Affairs has certified that this proposed amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed amended regulation is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant program—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 19, 1987.

Thomas K. Turnage,

Administrator.

PART 38—[AMENDED]

In 38 CFR Part 21, *Vocational and Rehabilitation and Education,* § 21.4201, is proposed to be amended by revising paragraph (g)(2) to read as follows:

§ 21.4201 Restrictions on enrollment, percentage of students receiving financial support.

* * * * *

(g) * * *

(2) Except for those enrollments with a beginning date before or the same as the date the school completed the most recent computation, no benefits will be paid either under chapter 106, Title 10, United States Code or under Chapters 30, 32, 34, or 36, Title 38, United States Code, when that computation establishes that the course—[10 U.S.C. 2136, 38 U.S.C. 1434, 1641, 1673(d) Pub. L. 98–525)

* * * * *

[FR Doc. 87–13074 Filed 6–8–87; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 85–36; FCC 87–176]

Broadcast Services; Review of Technical and Operational Requirements for Aural Broadcast STL and ICR Stations and TV Low Power Auxiliary Stations.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes allowing portable broadcast auxiliary TV pickup stations to use vacant channels in the UHF TV spectrum on a secondary, non-interference basis for transmission of program material over limited distances. This proposal would make additional frequencies available, and thus relieve the intra-system interference experienced by electronic news gathering field personnel at major news events.

DATES: Comments are due on or before July 17, 1987, and reply comments on or before August 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's *Further Notice of Proposed Rule Making,* MM Docket No. 85–36, adopted May 4, 1987, and released May 26, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of Further Notice of Proposed Rule Making

1. The Commission proposes allowing portable broadcast auxiliary TV pickup stations to use vacant channels in the UHF TV spectrum on a secondary, non-interference basis for transmission of program material over limited distances. This proposal would extend the sharing of this spectrum permitted by the *First Report and Order* (50 FR 48596, November 26, 1985) in this proceeding. The additional frequencies would offer licensees more flexibility, and would ease intra-system interference experienced by electronic news gathering (ENG) field personnel at major news events.

2. Specifically, the Commission proposal would: (1) Authorize TV pickup transmitters in the UHF TV bands 530–608 MHz and 614–806 MHz for transmission of program material between on-site field units on a secondary, non-interference basis; (2) allow maximum transmitter output of one watt (effective radiated power not to exceed four watts in any direction); (3) authorize a 12 MHz channel to transmit FM video signals using a maximum deviation of ±4 MHz and FM aural subcarriers with a maximum deviation of ±75 kHz; (4) divide the bands 530–608 MHz and 614–806 MHz into 5 MHz segments starting at the bottom edge of each band (alternatively, it would divide the band into 3 MHz segments); and (5) allow eligible TV broadcast licensees, TV broadcast networks, and cable entities to apply for blanket licenses to operate the portable TV pickup transmitters in the above bands on a secondary basis.

3. The interference situation the proposal is intended to rectify, results from several factors. Typically, live video coverage of an event located remote from the studio involves a camera (or cameras) that supplies video signals to a nearby vehicle, serving as a relay station for transmission by microwave to the studio. A microwave radio link between the camera and the relay vehicle is also required under certain conditions. The on-site camera links and relay statons generally operate in the 2, 6.4, 7, and 13 GHz bands. Currently, news crews are authorized the use of only the bands above 2 GHz for video program transmission from camera to relay vehicle. These bands are intensively used for ENG, resulting in frequent interference to microwave camera receivers.

4. In addition, these bands are shared with numerous fixed microwave stations, limiting the number of channels available for on-site links and relay stations in the 2, 7, and 13 GHz bands. Often, especially at events covered by TV crews from several different organizations, channels in all available bands must be used to send program material to the studios. Under these conditions, it is difficult to establish reliable microwave links from cameras to relay vehicles because the relay receivers experience interference from nearby vehicluar ENG transmitters operating in the same bands. These interference problems are expected to be exacerabated by the entry of newly eligible cable entity mobile stations authorized in the recent proceeding in General Docket No. 82–334.

5. Current Portable ENG microwave equipment uses frequency modulation (FM) for both video and aural transmission. The receivers usually provide an intermediate frequency output signal that can be patched directly into a transmitter for microwave relay. Compatible FM video and FM audio subcarriers are essential to taking advantage of this mode when relaying signals. Also, these FM transmissions are not directly compatible with vestigial sideband TV receivers designed for home viewing.

6. The proposed actions offer a solution to the interference problems by permitting field crews to use vacant UHF TV channels for UHF links to a vehicle for relay to the studio by microwave. They further reduce the threat of interference by providing for greater frequency separation between the many transmitters and receivers operating in close proximity to each other at the same event. Additionally, the threat of interference to home TV

reception would be virtually nil because, not only would TV pickups be very low powered but the proposed 12 MHz FM video would not be directly compatible with the 6 MHz vestigial sideban video broadcast for general viewing.

7. Finally, effective immediately, and pending the outcome of this proceeding, only LPAS applications filed under Part 74–H of the rules for operation below 530 MHz (UHF TV channel 24) will be granted.

Ex Parte Considerations

8. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex* parte contacts.

Regulatory Flexibility Initial Analysis

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 605, it is certified that the proposed rule should not adversely impact on small entities.

10. The Secretary shall cause a copy of the summarized *Notice*, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.*, (1981)).

Paperwork Reduction Act Statement

11. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping. Labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Comment Language

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 17, 1987, and reply comments on or before August 3, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

13. Accordingly, it is proposed, pursuant to authority contained in sections 4(i) and 303(r) of the Commissions Act of 1935, as amended, that Part 74 of the Commission's Rules is amended as set forth below.

14. Effective immediately, applications for Low Power Auxiliary Stations will be granted for operation only on frequencies 470—530 MHz, which were made available along with the frequencies 530—806 MHz by Report and Order in Docket 86–12, FCC 86–562, released January 16, 1987. Such applications for operation on frequencies 530—806 MHz, will be held in abeyance pending the outcome of this proceeding.

List of Subjects in 47 CFR Part 74

Television broadcasting.

It is proposed to amend Part 74 of Title 47 as follows:

PART 74—[AMENDED]

15. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

16. It is proposed to amend § 74.602 by adding a new paragraph (j) to read as follows:

§ 74.602 Frequency assignment.

* * * * *

(j) Frequencies in the bands between 530–608 MHz and 614–806MHz are available for use by short distance TV pickup links on a secondary, non-interference status to full power UHF TV, LPTV, and land mobile stations operating in these bands. A maximum channel bandwidth of 12 MHz is permitted. The bands are divided into 6 MHz segments starting at the bottom edge of each band (i.e., center of the first segment in each band is 533 MHz and 617 MHz, respectively). Two contiguous segments will be assigned as a channel.

17. It is proposed to amend § 74.604 by adding a new paragraph (e) to read as follows:

§ 74.604 Interference avoidance.

* * * * *

(e) TV pickup stations operating on frequencies in the bands between 530–608 MHz and 614–806 MHz are subject to the following:

(1) Site locations shall be removed from full-power UHF TV co-channel stations by the at least the following distances unless otherwise authorized by the Commission: Zone I, 97 Km (60 Miles); and Zones II & III, 120 Km (75 Miles)

(2) Site locations shall be removed from land mobile base co-channel stations by at least 40 Km (25 miles) or locations removed from the city center by at least 80 Km (50 miles) unless otherwise authorized by the Commission. Both base transmit and receive channels shall be protected.

(3) Licensees shall notify the local BAS frequency coordinator of intended operations prior to commencing such operations. The licensee will supply the following information relative to the intended operation: location, frequency, time, name of transmitter operator, and telephone number where operator can be contacted during operation.

18. It is proposed to amend § 74.636 by adding a new paragraph (c) to read as follows:

§ 74.636 Power limitations.

* * * * *

(c) TV pickup stations operating on frequencies in the bands between 530–608 MHz and 614–806 MHz are authorized maximum transmitter power output of one watt (effective radiated power not to exceed four watts in any direction) shall be permitted.

19. It is proposed to amend § 74.637 by adding a new paragraph (g) to read as follows:

§ 74.637 Emissions and emission limitations.

* * * * *

(g) For operation on frequencies in the bands between 530–608 MHz and 614–806 MHz, stations are authorized to transmit FM video signals using a maximum deviation of ±4 MHz and FM subcarriers with a maximum deviation of ±75 kHz. The maximum permitted subcarrier offset shall be 5.2 MHz from the video FM carrier The peak power of any emission outside the channel (6 MHz or more removed from the center frequency) shall limited to one (1) microwatt.

20. It is proposed to amend § 74.802 by revising paragraph (a) to read as follows:

§ 74.802 Frequency assignment.

(a) Frequencies the following bands may be assigned for use by low power auxiliary stations: 26.10–26.48 MHz, 54–72 MHz, 76–88 MHz, 161.625–161.775 MHz (except in Puerto Rico or the Virgin Islands), 174–216 MHz, 450–451 MHz, 455–456 MHz, 470–488 MHz, 488–494 MHz (except in Hawaii), 494–530 MHz.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–12959 Filed 6–8–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 242

Department of Defense Federal Acquisition Regulation Supplement; Voluntary Refunds

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering revising DFARS 242.71 to clarify that voluntary refunds are not a contractual or legal obligation, that voluntary refunds may be initiated by the contractor or solicited by the Government, and that a voluntary refund may be used to offset against a related future debt owed the Government.

DATE: Comments on the proposed rule should be submitted in writing to the DAR Council at the address shown below no later than August 10, 1987, to be considered in the formulation of the final rule. Please cite DAR Case 86–60 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquistion Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, OASD(P&L), c/o Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The current guidance in DFARS 242.71 contains unnecessary limitations which could deter or delay justifiable refund requests. This proposed change will help to clarify that guidance.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the proposed rule merely clarifies an action which is voluntarily undertaken by contractors. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87–610D in correspondence.

C. Paperwork Reduction Act Information

The Paperwork Reduction Act does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements. Therefore, OMB approval under 44 U.S.C. 3501 et seq. is not required.

List of Subjects in 48 CFR Part 242

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition, Regulatory Council.

Therefore, it is proposed that 48 CFR Part 242 be amended as follows:

PART 242—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 242 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Sections 242.7100 and 242.7101 are revised to read as follows:

242.7100 General.

A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. It is the policy of the Department of Defense to request voluntary refunds only after it has been determined that no contractual remedy is adequate to obtain the amount sought from the contractor. However, the Government may accept voluntary refunds tendered by a contractor; provided, that acceptance of the voluntary refund will not prejudice remedies otherwise available to the Government under the contract. The amounts tendered may be used as a set-off against a future debt owed to the Government by the contractor; provided, the contracting officer determines that the payment relates directly to that debt. In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all data relevant thereto to ensure that all contractural remedies are addressed and exhausted, and to advise whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

242.7101 Solicited Refunds.

Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property, or in the disposition of contractor inventory, any retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. The decision to solicit a voluntary refund shall be made by Heads of Contracting Activities or at such other level by Departmental procedures.

[FR Doc. 87–13099 Filed 6–8–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council will hold a series of public hearings and provide a comment period to solicit public input into the development of Amendment 2 to the Atlantic Sea Scallop Fishery Management Plan. Individuals and organizations may comment in writing to the Council if they are unable to attend the hearings.

DATE: The public comment period will close June 26, 1987. See **"SUPPLEMENTARY INFORMATION"** for dates, time, and locations of the hearings.

ADDRESS: All written comments should be addressed to Chairman, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617–231–0422.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council proposes to amend the Sea Scallop Fishery Management Plan to include one or a combination of the following measures: (1) A 3½ inch minimum shell height, which translates to an average 40 meat count minimum meat size; (2) staggered area closures with a 24 percent reduction in fishing mortality; (3) total closure of the fishery for one month with a 36 percent reduction in fishing mortality; (4) 30-meat count average meat size and 3½ inch to 4-inch minimum shell height.

The dates, time, and locations of the public hearings are scheduled as follows:

June 15, 1987.	7:00 p.m.	Crystal Coast Civic Center, 3505 Arendell Street (Highway 70), Morehead City, North Carolina.
June 15, 1987.	7:00 p.m.	Holiday Inn Downtown, 88 Spring Street, Portland, Maine.
June 16, 1987.	7:00 p.m.	Norfolk International Airport, Norfolk, Virginia.
June 17, 1987.	7:00 p.m.	Skipper's Inn, 110 Middle Street, Fairhaven, Massachusetts.
June 17, 1987.	7:00 p.m.	Grand Hotel, Beach and Philadelphia Streets, Cape May, New Jersey.

Dated: June 3, 1987.

Samuel W. McKeen,

Director, Management and Budget Office, National Marine Fisheries Service.

[FR Doc. 87–13053 Filed 6–8–87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 110
Tuesday, June 9, 1987

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

Soil Conservation Service

Manley Hill (CAT) RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Manley Hill RC&D Measure, Perry County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment along 100 feet of Manley Hill Road. A land slips approximately 100 feet in length has closed the road, threatens a gas and waterline, and a garage. Planned works of improvement include the installation of a subsurface drain to intercept the seepage causing the slips, regrading the slips to the original contour, and seeding the affected area.

The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: June 1, 1987.

Marshall D. Edens,

Assistant State Conservationist (WR).

[FR Doc. 87–13018 Filed 6–8–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

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: Annual Survey of State and Local Government Finances
Form Number: Agency F–11, 11A, 12, 12A, 13, 21A, 25, 28A, 29, 32, 33, 33–1, 33L1, 42; TI 5, 5B, 9, 9B, 9C, 9D, 9E; OMB—NA
Type of Request: New collection
Burden: 46,907 respondents; 82,401 reporting hours
Needs and Uses: The Census Bureau needs governmental finance data to publish benchmark statistics on public sector revenues, expenditures, debt, and assets; to provide data to the Bureau of Economic Analysis for GNP calculations; and to satisfy requirements for the 1987 Census of Governments.
Affected Public: State or local governments
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: June 3, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–13117 Filed 6–8–87; 8:45 am]

BILLING CODE 3510–07–M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1987 Assets and Expenditures Survey
Form Number: Agency B–151D(S), 151A(S), 151(S), 152(S), 153D(S), 153(S), 450(S), 451(S), 500(S1), 500(S2), 500(S3); OMB—NA
Type of Request: New collection
Burden: 47,600 respondents; 59,500 reporting hours
Needs and Uses: This survey will be used to implement recommendations made by the *Gross National Product Data Improvement Project Report*, prepared under the auspices of the Office of Management and Budget. The survey fills gaps in underlying data for the national economic accounts, as identified by that report.
Affected Public: State or local governments, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle 395–7340

Agency: Bureau of the Census
Title: 1988 Dress Rehearsal—Group Quarters Enumeration
Form Number: Agency DX-116C; OMB—NA
Type of Request: New collection
Burden: 52,100 respondents; 434 reporting hours
Needs and Uses: This operation is conducted in order to obtain the name and unit designation of all persons residing in group quarters for the 1988 Dress Rehearsal. The procedure will be used at both institutional and non-institutional group quarters and the names will be noted on the listing sheet. The respondents will be the administrators at the group quarters.
Affected Public: Small businesses or organizations
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: June 3, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-13118 Filed 6-8-87; 8:45 am]

BILLING CODE 3510-07-M

Federal Coal Export Commission; Committee Meeting

AGENCY: Office of the Secretary, U.S. Department of Commerce.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App I (1976), as amended, notice is hereby given that the Federal Coal Export Commission (Commission) will hold the final meeting of the Committee on Export Finance. The date and time of the meeting is as follows:

Wednesday, June 17, 1987, 3:30-5:00 p.m.

The meeting will be held in room 3708 at the U.S. Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC.

At this meeting, the Committee on Export Finance will discuss its final draft recommendations.

The public is welcome to attend this meeting and will be admitted to the extent that seating is available. Public comments are welcome and persons wishing to make formal statements should notify the Executive Director of the Commission in advance of the meeting. The Chair retains the right to place reasonable limits on the duration of public comments. Written statements may be submitted before or after each session.

For further information contact Robert H. Brumley, Executive Director of the Commission, at (202) 377-4772.

Signed in Washington, DC, this 4th day of June 1987.

Robert H. Brumley,

Executive Director.

[FR Doc. 87-13119 Filed 6-8-87; 8:45 am]

BILLING CODE 3510-BW-M

Federal Coal Export Commission; Committee Meeting

AGENCY: Office of the Secretary, U.S. Department of Commerce.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App I (1976), as amended, notice is hereby given that the Federal Coal Export Commission (Commission) will hold the final meeting of the Committee on Trade. The date and time of the meeting is a follows: Wednesday, June 17, 1987, 1:30-3:00 p.m.

The meeting will be held in room 3708 at the U.S. Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC.

At this meeting, the Committee on Trade will discuss its final draft recommendations.

The public is welcome to attend this meeting and will be admitted to the extent that seating is available. Public comments are welcome and persons wishing to make formal statements should notify the Executive Director of the Commission in advance of the meeting. The Chair retains the right to place reasonable limits on the duration of public comments. Written statements may be submitted before or after each session.

For further information contact Robert H. Brumley, Executive Director of the Commission, at (202) 377-4772.

Signed in Washington, DC, this 4th day in June, 1987.

Robert H. Brumley,

Executive Director.

[FR Doc. 87-13120 Filed 6-8-87; 8:45 am]

BILLING CODE 3510-BW-M

National Medal of Technology Nomination Evaluation Committee; Closed Meeting

AGENCY: Office of Productivity, Technology and Innovation, Office of Economic Affairs, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee charter was renewed on February 10, 1986. The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology.

The Committee will meet only in executive session to discuss matters dealing with the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

Time and Place: The meeting will begin at 9:30 a.m. and end at 5:00 p.m. on June 24, 1987. The meeting will be held in Room 180 of the National Academy of Sciences Building, 21st Street and Constitution Avenue NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Goodman, Executive Director, National Medal of Technology Nomination Evaluation Committee, Room 4829, Herbert C. Hoover Building, U.S. Department of Commerce, Washington, DC 20230, (202) 377-0825.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of 5 U.S.C. 552b (c) (4) and (6) was approved by the Assistant Secretary of Commerce for Administration, with the concurrence of the General Counsel in accordance with the Federal Advisory Committee Act, since the discussions are likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and may also disclose trade secrets and commercial or financial information obtained from person and privileged or confidential. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230, (202 277-4217).

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

[FR Doc. 87-13019 Filed 6-8-87; 8:45 am]

BILLING CODE 3510-18-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Research Reserves; Availability of Findings

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Maryland, Puerto Rico, Louisiana, and Maine Coastal Management Programs and California's Elkhorn Slough National Estuarine Research Reserve. Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Section 315(f) ofthe CZMA requires a periodic review of the performance of each Reserve with respect to its operation and management. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives indentified in section 303(2)(A)–(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone: 202/673–5104) .

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: May 28, 1987.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–13020 Filed 6–8–87; 8:45 am]

BILLING CODE 3510–08–M

Intent To Evaluate Performance of New York Coastal Management Program et al.

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the New York Coastal Management Program (CMP); Wisconsin CMP; Alabama CMP; Alaska CMP; Mississippi CMP; and the Hawaii National Estuarine Research Reserve through September 30, 1987. The reviews of coastal management programs will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), which requires a continuing review of the performance of coastal states with respect to coastal management, including detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary of Commerce, addressed the coastal management needs identified in section 303(2)(A) through (I) of the CZMA, and adhered to the terms of any grant, loan or cooperate agreement funded under CZMA. The review of National Estuarine Research Reserves will be conducted pursuant to section 315(f) of the CZMA which requires the Secretary of Commerce to evaluate periodically the operation and management of each Reserve, including education and interpretive activities, and the research being conducted within the Reserve. The reviews will involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the pubic. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state, are available upon request from the OCRM. Written comments from all interested parties on each of those programs to the contact listed below are encouraged at this time. OCRM will palce subsequent notice in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235 (telephone: 202/673–5104).

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: June 1, 1987.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87–13021 Filed 6–8–87; 8:45 am]

BILLING CODE 3510–08–M

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and the Council's Administrative Committee will convene separate public meetings at the Hotel Pierre, De Diego Avenue, Santurce, Puerto Rico, as follows:

Council—On July 8, 1987, at 9 a.m., will convene its 59th regular meeting to consider fishery management plans (FMPs) under development; discuss progress on the first draft of the draft conch FMP; discuss the status of the implementation of FMP regulations, the proposal to bring tunas under the Magnuson Fishery Conservation and Management Act, apparent conflicts between commercial trap fishermen and scuba divers, as well discuss administrative matters related to Council operations. The meeting will adjourn on July 8 at 5 p.m., reconvene on July 9 at 9 a.m. and adjourn at noon.

Administrative Committee—On July 7, 1987, will convene at 2 p.m. to discuss issues related to the Committee's regular administrative operations and will adjourn at 5 p.m.

Dated: June 3, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87–13059 Filed 6–8–87; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene public meetings of its reef fish advisory bodies at the Ramada Inn, 5303 West Kennedy Boulevard, Tampa, FL, as follows:

Reef Fish Advisory Panel and Reef Fish Stressed Area Panel—On June 15–16, 1987, will review a draft options paper addressing issues related to size and bag limits, gear restrictions and changes to both the geographic extent and regulatory restrictions of the inshore stressed area.

Reef Fish Management Committee—On June 22–23, 1987, the Committee's agenda will be the same as identified above for the Reef Fish Advisory Panel and Reef Fish Stressed Area Panel.

For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: June 3, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87–13060 Filed 6–8–87; 8:45 am]

BILLING CODE 3510–22–M

Inter-Council Billfish Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic, New England, Mid-Atlantic, Caribbean and Gulf of Mexico Fishery Management Councils' Inter-Council Billfish Committee will discuss development of the Billfish Fishery Management Plan. The public meeting will convene June 30–July 1, 1987 (from 1 p.m. on June 30 to noon on July 1), at the Sheraton Hotel, Hyannis, MA. An agenda will be available to the public on or about June 8, 1987.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: June 3, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87–13061 Filed 6–8–87; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council's Executive and Finance Committees will convene a joint public meeting, June 17, 1987, from 1 p.m. to 5 p.m. at the South Atlantic Council's Headquarters (address below). The Committees will discuss Council business: 1987–88 budgets, audit exit conference, and office space lease renewal.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: June 3, 1987.

Henry R. Beasley,

Director, Office of International Fisheries, National Marine Fisheries Service.

[FR Doc. 87–13062 Filed 6–8–87; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Technical Information Service

Intent To Grant Exclusive Patent License; Triton Biosciences Inc.

The National Techanical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Triton Biosciences Inc. having a place of business in Alameda, California 94501 an exclusive right in the United States to practice the invention embodied in U.S. Patent Application 6–836,414, "A Human Gene Related But Distinct From EGF Receptor Gene." The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted within the above specified 60-day period and should be addressed to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87–13139 Filed 6–8–87; 8:45 am]

BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection concerning Integrity of Unit Prices.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781.

SUPPLEMENTARY INFORMATION:

a. Purpose

1. Integrity of Unit Prices is a regulation and a contract clause which concerns the distribution of costs within contracts to assure that no unit price distortions result. The regulation and the clause, which are set forth in FAR 15.812–1(c) and 52.215–26 respectively, require offerors to *identify* in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The existing requirements included in the FAR were required by section 1245 of Pub. L. 98–525 (for DoD and NASA) and section 501 of Pub. L. 98–577 (for the civilian agencies).

2. Section 927 of Pub. L. 99–500 revised Pub. L. 98–525, that was applicable to DoD and NASA, by specifically excluding from its requirements, supplies for which the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public. No corresponding changes were made to the parallel requirements for civilian agencies in Pub. L. 98–577. Consequently, FAR 15.812 and 52.215–26 are being revised by interim rule to delete from identification requirements under DoD and NASA proposals.

commercial supplies where the price is based on established catalog or market prices.

b. Annual reporting burden

The annual reporting burden is estimated as follows: Respondents, *7,822;* responses per respondent, *97;* total annual responses *758,734;* hours per response, *.084;* and total burden hours, *63,734.* This represents a 2,475 hour program reduction from the previous burden of 66,209 hours that had been approved by OMB under Control No. 9000–0080.

Obtaining Copies of Proposal

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices.

Dated: June 3, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–13011 Filed 6–8–87; 8:45 am]

BILLING CODE 6820–61–M

Defense Logistics Agency

Announcement of Direct Conversion to Contract Performance of Commercial Activities (CA) Function

AGENCY: Defense Logistics Agency (DLA), DoD.

ACTION: Notification of intent to effect direct conversion to contract performance of DLA CA function.

SUMMARY: The publication of decisions to directly convert commercial activitives (CA) to contract performance is required by Supplement to OMB Circular No. A–76 (Revised) and DoD Instruction 4100.33, "Commercial Activities Program Procedures."

Based on a Simplified Cost Comparison conducted 13 April 1987, the Defense Logistics Agency will issue a solicitation to directly convert to contract performance the mail service functions of the Defense Contract Administration Services Region, Boston (DCASR Boston) Region Headquarters Mailroom, Boston, MA. These mail services include: Receipt and distribution of incoming mail; distribution of administrative communications; dispatch of outgoing mail; and maintenance of centralized suspense control on unclassified and classified mail and teletypewriter communications.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Krupczak, DCASR Boston, Office of Policy and Plans (DCASR BOS–LP), 495 Summer Street, Boston, MA 02210–2184, (617) 451–4595.

Interested commercial concerns should refer to announcements in the Commerce Business Daily (CBD) to be made as part of the contract solicitation process.

William J. Cassell,

Comptroller, Defense Logistics Agency.

[FR Doc. 87–13022 Filed 6–8–87; 8:45 am]

BILLING CODE 3620–01–M

Department of the Navy

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the commissioner of Patents and Trademarks, Washington, DC 20231, for $1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

DATE: June 9, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000, telephone (202) 696–4001.

Patent 4,404,170: Instantaneous Start and Stop Gas Generator; filed 23 April 1982; patented 13 September 1983.

Patent 4,450,406: Triaxial Optical Fiber System for Measuring Magnetic Fields; filed 5 October 1981; patented 22 May 1984.

Patent 4,488,113: Magnetic Bridge Proximity Sensor; filed 15 July 1982; patented 11 December 1984.

Patent 4,488,765: Dead-Faced Electrical Connector with Electromagnetic Vulnerability; filed 18 June 1980; patented 18 December 1984.

Patent 4,493,281: Shallow Depth Lead Weight Ejection Circuit; filed 1 April 1983; patented 15 January 1985.

Patent 4,494,938: Master Buoy System for Acoustic Array Deployment, using Underwater Glide Bodies Remotely Launched from a Submerged Pod; filed 24 September 1980; patented 22 January 1985.

Patent 4,495,849: Remotely Activated Cable Cutter; filed 27 September 1982; patented 29 January 1985.

Patent 4,499,566: Electro-Ceramic Stack; filed 21 January 1981; patented 12 February 1985.

Patent 5,499,584: Data Validation Monitor; filed 26 May 1983; patented 12 February 1985.

Patent 4,503,307: Shielding Apparatus for Microwave Thawings; filed 26 June 1983; patented 5 March 1985.

Patent 4,503,565: Membrane Valve for Dry Diver's Apparel; filed 17 February 1983; patented 12 March 1985.

Patent 4,507,659: Pulse Compression Sidelobe Suppressor; filed 22 June 1983; patented 26 March 1985.

Patent 4,508,490: Two Stage Manual Air Pump; filed 10 January 1984; patented 2 April 1985.

Patent 4,509,827: Reproducible Standard for Aligning Fiber Optic Connectors which Employ Graded Refractive Index Rod Lenses; filed 2 February 1983; patented 9 April 1985.

Patent 4,510,607: Semi-Conductor Laser End Facet Coatings for use in Solid or Liquid Environments; filed 3 January 1984; patented 9 April 1985.

Patent 4,513,329: Manchester Decoder Clock Multiplier; filed 1 September 1983; patented 23 April 1985.

Patent 4,513,542: Portable Surfacing Machine for Boiler Manhole; filed 14 October 1983; patented 30 April 1985.

Patent 4,514,834: Expendable Underwater Acoustic Projector; filed 16 June 1983; patented 30 April 1985.

Patent 4,517,674: Zinc-Diffused Narrow Stripe Alfaas/Gaas Double Heterostructure Laser; filed 31 August 1982; patented 14 May 1985.

Patent 4,518,632: Metallized Synthetic Cable; filed 18 April 1984; patented 21 May 1985.

Patent 4,519,826: Optical Fibers having a Fluoride Glass Cladding and Method of Making; filed 14 April 1984; patented 28 May 1985.

Patent 4,520,273: Fluid Responsive Rotor Generator; filed 12 September 1983; patented 28 May 1985..

Patent 4,525,956: In-Situ Annular Face Grinder; filed 9 April 1984; patented 2 July 1985.

Patent 4,526,832: Antistatic Packaging Material and Steel Substrates Packaged Therewith; filed September 1983; patented 2 July 1985.

Patent 4,527,161: 3D Imaging with Stepped Frequency Wave-Forms and Monopulse Processing; filed 8 September 1981; patented 3 July 1985.

Patent 4,530,078: Microbending Fiber Optic Acoustic Sensor; filed 11 June 1982; patended 16 July 1985.

Patent 4,531,195: Polychromatic Time-Integrating Optical Processor for High-Speed Ambiguity Processing; filed 16 May 1984; patented 23 July 1985.

Patent 4,531,197: Real-Time Fourier Transformer using One Acousto-Optical Cell; filed 27 April 1983; patented 23 July 1985.

Patent 4,531,832: Analog Inclination Data System; filed 21 March 1984; patented 30 July 1985.

Patent 4,533,215: Real-Time Ultra-High Resolution Image Projection Display using Laser-Addressed Liquid Cyrstal Light Valve; filed 2 December 1982; patented 6 August 1985.

Patent 4,533,333: Helicopter Extractable Cold Weather/Water Life Raft; filed 8 August 1980; patented 6 August 1985.

Patent 4,533,875: Wide-Band Gyrotron Traveling-Wave Amplifier; filed 16 June 1982; patented 6 August 1985.

Patent 4,534,338: Servo Operated Anti-G Suit Pressurization System; filed 24 May 1984; patented 13 August 1985.

Patent 4,535,023: Process for Fabricating Cryogenic Targets and Targets made Thereby; filed 3 June 1983; patented 13 August 1985.

Patent 4,536,088: Polarimetric Fabry-Perot Sensor; filed 17 September 1982; patented 20 August 1985.

Patent 4,537,434: Adjustable Self-Releasing Hook; filed 2 May 1984; patented 27 August 1985.

Patent 4,538,275: Synergistic Quasi-Free Electron Laser; filed 27 February 1984; patented 27 August 1985.

Patent 4,539,533: Digital MSK Modulator; filed 3 April 1981; patented 3 September 1985.

Patent 4,542,334: Induced-Signal Capacitance Effect Cable Tracking Sensor; filed 26 September 1983; patented 17 September 1985.

Patent 4,543,070: Linked-Spar Motion-Compensation Lifting System; filed 4 October 1984; patented 24 September 1985.

Patent 4,544,891: Nuclear Magnetic Resonance Gyroscope; filed 4 October 1984; patented 24 September 1985.

Patent 4,545,041: Shock-Hardened Hydrophone; filed 27 October 1982; patented 1 October 1985.

Patent 4,545,643: Retro-Reflective Alignment Technique for Fiber Optical Connectors; filed 4 May 1983; patented 8 October 1985.

Patent 4,547,164: Ship Deck Lifeline; filed 6 February 1984; patented 15 October 1985.

Patent 4,548,782: Tokamak Plasma Heating with Intense Pulse ION Beams; filed 27 March 1980; patented 22 October 1985.

Patent 4,550,271: Gyromagnetron Amplifier; filed 23 June 1983; patented 29 October 1985.

Patent 4,551,059: Multi-Directional Straddle-Lift Carrier; filed 2 November 1983; patented 5 November 1985.

Patent 4,551,349: BIS (Pentafluorosulfur) Diacetylene Polymer Therefrom and Preparations Thereof; filed 16 December 1983; patented 5 November 1985.

Patent 4,552,457: Fiber Optic Interferometer using Two Wavelengths or Variable Wavelength; filed 1 February 1983; patented 12 November 1985.

Patent 4,553,425: Dynamnic Pressure Test Unit-Ratio Method; filed 2 February 1984; patented 19 November 1985.

Patent 4,553,629: Ellipticized Acoustic Lens Providing Balanced Astigmatism; filed 7 April 1980; patented 19 November 1985.

Patent 4,554,483: Active Circular Gyrotron Travelingwave Amplifier; filed 29 September 1983; patented 19 November 1985.

Patent 4,554,484: Complex Cavity Gyrotron; filed 29 August 1983; patented 19 November 1985.

Patent 4,554,650: Oil Filled Towed Array Hose without Couplings; filed 2 April 1982; patented 19 November 1985.

Patent 4,554,836: Laser Virometer; filed 31 August 1984; patented 25 November 1985.

Patent 4,555,130: Diver's Umbilical Quick-Disconnect Device; filed 1 April 1983; patented 26 November 1985.

Patent 4,555,177: Method and Apparatus for Detecting Single State Resonance Fluorescence; filed 22 December 1983; patented 26 November 1985.

Patent 4,555,273: Furnace Transient Anneal Process; filed 27 February 1984; patented 26 November 1985.

Patent 4,555,614: Weld Metal Cooling Rate Indicator System; filed 24 December 1984; patented 26 November 1985.

Patent 4,555,703: Environmental Mapping System; filed 19 June 1980; patented 26 November 1985.

Patent 4,556,013: Coupled Amplifier Module Feed Networks for Phased Array Antennas; filed 1 April 1983; patented 2 January 1986.

Patent 4,556,293: Broadband Unpolarized Light Source; filed 2 May 1983; patented 3 December 1985.

Patent 4,556,436: Method of Preparing Single Crystalline Cubic Silicon Carbide Layers; filed 22 August 1984; patented 3 December 1985.

Patent 4,556,855: RF Components and Networks in Shaped Dielectrics; filed 31 October 1983; patented 3 December 1985.

Patent 4,556,963: Underwater Sound Generator; filed 1 December 1982; patented 3 December 1985.

Patent 4,557,553: Method of Wavelength Multiplexing in Fused Single-Mode Fiber Couplers; filed 2 November 1981; patented 10 December 1985.

Patent 4,558,923: Picosecond Bistable Optical Switch using Two-Photon Transitions; filed 22 December 1983; patented 17 December 1985.

Patent 4,559,475: Quasi-Optic Harmonic Gyrotron and Gyroklystron; filed 12 July 1984; patented 17 December 1985.

Patent 4,560,228: Electrical Connector for Sonobuoy Launch System; filed 10 June 1983; patented 24 December 1985.

Patent 4,562,706: Mechanical Relocker for Locking Bolts; filed 2 February 1984; patented 7 January 1986.

Patent 4,563,331: System for Measuring Bioluminescence Flash Kinetics; filed 21 November 1983; patented 7 January 1986.

Patent 4,563,756: Pseudo Randon Noise Generator Calibration for Acoustic Hydrophones; filed 1 April 1983; patented 7 January 1986.

Patent 4,565,710: Process for Producing Carbide Coatings; filed 6 June 1984; patented 21 January 1986.

Patent 4,566,011: Palindromic Polyphase Code Expander-Compressor; filed 8 July 1983; patented 21 January 1986.

Patent 4,566,658: Aircraft Barricade; filed 1 August 1983; patented 28 January 1986.

Patent 4,566,659: Pivotable Support Rescue Hoist; filed 18 October 1984; patented 28 January 1986.

Patent 4,567,100: Forced Entry and Ballistic Resistant Laminar Structure; filed 22 August 1983; patented 28 January 1986.

Patent 4,567,401: Wide-Band Distributed RF Coupler; filed 12 June 1982; patented 28 January 1986.

Patent 4,567,609: Automatic Character Recognition System; filed 28 March 1983; patented 28 January 1986.

Patent 4,568,189: Apparatus and Method for Aligning a Mask and Wafer in the Fabrication of Integrated Circuits; filed 26 September 1983; patented 4 February 1986.

Patent 4,568,396: Wear Improvement in Titanium Alloys by ION Implantation; filed 3 October 1984; patented 4 February 1986.

Patent 4,568,498: (Vinyloxy) Chlorocyclotriphosphazenes; filed 30 April 1984; patented 4 February 1986.

Patent 4,568,650: Oxidation of Reduced Ceramic Products; filed 17 January 1984; patented 4 February 1986.

Patent 4,569,033: Optical Matrix-Matrix Multipler Based on Outer Product

Decomposition; filed 14 June 1983; patented 4 February 1986.

Patent 4,570,248: Interferometric Hydrophone Reference Low Frequency Compensation; filed 27 September 1982; patented 11 February 1986.

Patent 4,571,591: Three Dimensional Orthogonal Delay Line Bootlace Lens Antenna; filed 16 December 1983; patented 18 February 1986.

Patent 4,572,518: Leak Free Floating Packing Shaft Seal; filed 31 October 1984; patented 25 February 1986.

Patent 4,572,900: Organic Semiconductor Vapor Sensing Method; filed 25 April 1984; patented 25 February 1986.

Patent 4,573,050: Dual Scan Rate Radar; filed 17 February 1983; patented 25 February 1986.

Patent 4,573,214: Satelllite Mounted System for Transferring Information Using Modulated Sunlight; filed 12 February 1981; patented 25 February 1986.

Patent 4,573,797: Analog Fiber Gyro with Extended Linear Range: filed 24 February 1984; patented 4 March 1986.

Patent 4,574,252: Constant Rise AGC Device; filed 25 March 1985; patented 4 March 1986.

Patent 4,574,287: Fixed Aperture, Rotating Feed, Beam Scanning Antenna System; filed 4 March 1983; patented 4 March 1986.

Patent 4,575,026: Ground Launched Missile Controlled Rate Decelerator; filed 2 June 1984; patented 11 March 1986.

Patent 4,575,179: Integrated Optical Signal Processor using Diffraction of Light by Magnetostatic Waves; filed 28 October 1983; patented 11 March 1986.

Patent 4,578,614: Ultra-Fast Field Emitter Array Vacuum Integrated Circuit Switching Device; filed 23 July 1982; patented 25 March 1986.

Patent 4,578,677: Range Doppler Coupling Magnifier; filed 23 September 1983; patented 25 March 1986.

Patent 4,578,804: Polynomial Grating; filed 30 May 1984; patented 25 March 1986.

Patent 4,580,140: Twin Aperature Phased Array Lens Antenna; filed 17 January 1983; patented 1 April 1986.

Patent 4,580,931: In-Situ Machine for Refurbishing a Bore in a Workpiece; filed 15 December 1983; patented 8 April 1986.

Patent 4,580,987: Mooring Line Lockup Mechanism; filed 27 August 1984; patented 8 April 1986.

Patent 4,582,724: Chemical Bonding Agent for the Suppression of Rusty Bolt Intermodulation Interference; filed 23 April 1985; patented 15 April 1986.

Patent 4,585,121: Container for Multichip Hybrid Package; 24 June 1985; patented 29 April 1986.

Patent 4,585,710: Coherent Receiver Phase and Amplitude Alignment Circuit; filed 22 April 1985; patented 29 April 1986.

Patent 4,587,723: Method for Making a High Current Fiber Brush Collector; filed 2 May 1985; patented 3 May 1986.

Patent 4,590,448: Tunable Microwave Filters Utilizing a Slotted Line Circuit; filed 25 September 1985; patented 20 May 1986.

Patent 4,591,510: Rusty Bolt Intermodulation Interference Reducer; filed 12 April 1985; patented 27 May 1986.

Patent 4,591,511: Adhesive Repair Patch; filed 30 July 1984; patented 27 May 1986.

Patent 4,591,786: Fiber-Optic Magnetic Gradiometer with Variable Magnetic Biasing Fields; filed 17 August 1984; patented 27 May 1986.

Patent 4,592,056: Resonant Photon Pumping Mechanisms for a Plasma X-Ray Laser; filed 10 January 1984; patented 27 May 1986.

Patent 4,593,968: Potting Techniques for Fiber Optical Couplers; filed 22 January 1981; patented 10 June 1986.

Patent 4,595,925: Altitude Determining Radar using Multi-Path Discrimination; filed 28 March 1983; patented 17 June 1986.

Patent 4,596,461: In-Line Concurrent Electromagnetic Beam Analyzer; filed 16 February 1984; patented 24 June 1986.

Patent 4,596,986: Sidelobe Canceller with Adaptive Antenna Subarraying using a Weighted Bulter Matrix; filed 29 August 1983; patented 24 June 1986.

Patent 4,597,173: Electronic Module Insertion and Retraction Mechanisn; filed 20 June 1984; patented 1 July 1986.

Patent 4,597,345: Torpedo Cableless Umbilical; filed 29 October 1984; patented 1 July 1986.

Patent 4,597,631: Printed Circuit Card Hybrid; filed 2 December 1982; patented 1 July 1986.

Patent 4,597,666: Apparatus for Determining the Liquid Water Content of a Gas; filed 18 April 1984; patented 1 July 1986.

Patent 4,597,933: Radiative Opacity and Emissivity Measuring Device; filed 1 June 1983; patented 1 July 1986.

Patent 4,598,247: Spectrum Analyzer and Analysis Method of Measuring Power and Wavelength of Electromagnetic Radiation; filed 4 January 1985; patented 8 July 1986.

Patent 4,599,711: Multi-Lever Miniature Fiber Optic Transducer; filed 29 October 1984; patented 8 July 1986.

Patent 4,600,853: Saw-CTD Serial to Parallel Imager and Waveform Recorder; filed 23 August 1985; patented 15 July 1986.

Patent 4,600,885: Fiber Optic Magnetometer for Detecting DC Magnetic Fields; filed 30 May 1985; patented 15 July 1986.

Patent 4,601,533: Laser Eye Protection Visor using Multiple Holograms; filed 29 October 1982; patented 22 July 1986.

Patent 4,603,296: Fiber Optic DC Magnetometer without Hysteresis Ambiguity; filed 15 May 1984; patented 9 July 1986.

Patent 4,603,408: Synthesis of Arbitrary Broadband for a Parametric Array; filed 21 July 1983; patented 29 July 1986.

Patent Application 612,484: Hybrid Fiber Optics and Radio Frequency Telemetry Apparatus for Acquiring Data for an Underwater Environment; filed 21 May 1984.

Patent Application 614,493: High Security Internal Locking System; filed 29 May 1984.

Patent Application 630,628: Low Cost Sonobuoy; filed 12 July 1984.

Patent Application 644,475: Mooring Line Lockup Mechanism; filed 27 August 1984.

Patent Application 645,129: Air Deployed Oceanographic Mooring; filed 27 August 1984.

Patent Application 665,464: Multi-Lever Miniature Fiber Optic Transducer: filed 29 October 1984.

Patent Application 678,187: Method for Determining the Orientation of a Moving Platform; filed 4 December 1984.

Patent Application 688,126: Method for Managing Redundant Resources in a Complex Avionics Communications System; filed 31 December 1984.

Patent Application 688,662: Electronic Noise-Reducing System; filed 3 January 1985.

Patent Application 708,184: Method for Shaping Women's Hat Brim; filed 4 March 1985.

Patent Application 711,786: Transition and Inner Transition Metal Chelate Polymers for High Energy Resist Lithography; filed 14 March 1985.

Patent Application 722,542: Portable Radar Simulator with Adjustable Side Lobe Generator; filed 12 April 1985.

Patent Application 738,217: High Frequency Response Multi-Layer Heat Flux Gauge; filed 28 May 1985.

Patent Application 739,354: Conductive Heterocyclic Ladder Polymers; filed 30 May 1985.

Patent Application 742,601: Thermodynamic Waste Heat Transfer System; filed 5 June 1985

Patent Application 745,155: Improved Pseudo-Random Noise Generator; filed 17 June 1985.
Patent Application 747,601: Container for Multichip Hybrid Package; filed 24 June 1985.
Patent Application 748,248: An Apparatus for and a Method of Determining Compass Heading; filed 24 June 1985.
Patent Application 748,376: An Apparatus for and a Method of Measuring Magnetic Effect Due to Eddy Currents; filed 24 June 1985.
Patent Application 750,952: An Air-Electric Powered Hybrid Motor; filed 2 July 1985.
Patent Application 751,157: Shipboard Internal Locking System; filed 2 July 1985.
Patent Application 752,290: Chemical Vapor Deposition (CVD) of Cubic Silicon Carbide, SiC; filed 2 July 1985.
Patent Application 752,704: Improved Synthesis of 1,3-Dioxa-5,6,6,7,7-Hexafluorocyclooctane; filed 8 July 1985.
Patent Application 753,519: Disposal Dearmer for EOD Applications; filed 9 July 1985.
Patent Application 755,757: Microwave Recursive Filter; filed 17 July 1985.
Patent Application 757,402: Anchoring System for Concrete Floating Pier; filed 22 July 1985.
Patent Application 761,365: Multilayer Channel Fast Orthogonalization Network; filed 3 August 1985.
Patent Application 762,365: Multilayer Superconducting Shield and Method of Manufacturing Same; filed 5 August 1985.
Patent Application 764,687: Battery Tester; filed 12 August 1985.
Patent Application 767,205: Adaptive Doppler Filter Banks; filed 19 August 1985.
Patent Application 767,925: Monolayer-Forming Substituted Phthalocyanine Compunds; filed 21 August 1985.
Patent Application 768,004: Semiconductor Film Device for Monitoring Gases; filed 21 August 1985.
Patent Application 768,650: Biosensors from Membrane Proteins Reconstituted in Polymerized Lipid Bilayers; filed 23 August 1985.
Patent Application 769–099: Saw-Ctd Parallel-to-Serial Imager; filed 26 August 1985.
Patent Application 770,166: Quasi-Accumulation Mode Fet; filed 28 August 1985.
Patent Application 773,276: Combuster Fiberscope; filed 6 September 1985.
Patent Application 780,068: Tunable Microwave Filters Utilizing a Slotted Line Circuit; filed 25 September 1985.
Patent Application 780,123: Magnetic Separation Device; filed 25 September 1985.
Patent Application 780,495: Fiber Optic Microbend Phase Shifter and Modulator; filed 26 September 1985.
Patent Application 781,560: A Schottky Diode and Method of Fabrication; filed 30 September 1985.
Patent Application 786,569: A Partially Adaptive Array using Bootlace Lens; filed 11 Ocober 1985.
Patent Application 786,982: Radar Doppler Processor using a Fast Orthogonalization Network; filed 11 October 1985.
Patent Application 788,371: Automated Anthropometric Data Measurement System; filed 17 October 1985.
Patent Application 790,028: Training Smoke Generator; filed 22 October 1985.
Patent Application 794,928: Chemical Detoxification of Polychorinated Biphenyls; filed 4 November 1985.
Patent Application 794,984: Film Chip Capacitor; filed 4 November 1985.
Patent Application 795,795: Thermally Buffered Sodium-Neon-Laser Target for Coherent X-Ray Production; filed 7 November 1985.
Patent Application 795,796: Optical Injection Locking of Laser Diode Array; filed 7 November 1985.
Patent Application 795,949: High Stability Fiber Optic Magnetic Field Sensor with Enhanced Linear Range using Magnetic Feedback Nulling; filed 7 November 1985.
Patent Application 799,774: An Underwater Acoustic Pressure Release for Depths of 2,000 Feet; filed 20 November 1985.
Patent Application 802,286: Heterojunction (D^- or A^+) Millimeter and Submillimeter Wave Detector; filed 27 November 1985.
Patent Application 807,150: Glass Compositions for Producing Pressure and Temperature Insensitive Optical Fiber Coatings and Optical Fibers Therefrom; filed 10 December 1985.
Patent Application 808,326: Electrodeposition of Refractory Metal Silicides; filed 12 December 1985.
Patent Application 808,697: Microwave and Millimeter Wave Phase Shifter; filed 12 December 1985.
Patent Application 808,699: Method of Forming Thermally Stable High Resistivity Regions in N-Type Indium Phosphide by Oxygen Implantation; filed 12 December 1985.
Patent Application 808,700: Serum Complement Assay Method; filed 13 December 1985.
Patent Application 811,974: Preparation of Refractor Tunnel Barriers of Sputtered Boron Nitride; filed 23 December 1985.
Patent Application 821,308: Nonskid Coating Formulations; filed 22 January 1986.
Patent Application 823,719: Adaptive Associative-Processing Optical Computing Architectures; filed 29 January 1986.
Patent Application 827,589: Double-Stage Air Filter; filed 10 February 1986.
Patent Application 836,652: Rapid Electron Beam Accelerator (REBA-TRON); filed 5 March 1986.
Patent Application 838,073: Resonance CHAMBER System; filed 21 March 1986.
Patent Application 839,246: Quantum Well Electron Barrier Diode; filed 23 March 1986.
Patent Application 852,469: Alkaline Earth Metaborates as Property Enhancing Agents for Refractory Concrete; filed 11 April 1986.
Patent Application 852,596: Lipid Tubules; filed 16 April 1986.
Patent Application 852,601: Co-Sputtered Thermionic Cathode; filed 16 April 1986.
Patent Application 856,065: Alarm Capability for Pin Tumbler Locks; filed 24 April 1986.
Patent Application 859,109: Electric Wave Device and Method for Efficient Excitation of a Dielectric Rod; filed 1 May 1986.
Patent Application 863,285: Minimum Inductance Laser Head for Pulsed Transverse Discharges without Wall Tracking; filed 15 May 1986.
Patent Application 870,213: Non-Aqueous Primary Cell; filed 29 May 1986.
Patent Application 875,159: Branch Chained Polynitrodiols; filed 17 June 1986.
Patent Application 876,618: Test Apparatus for Uniform Tensioning of Long Length of Small Cables in Simulated Environments: filed 20 June 1986.
Patent Application 878,149: Bis (2-Fluoro-2,2-Dintroethoxy) Acetonitrile and a Method of Preparation; filed 23 June 1986.
Patent Application 883,249: Robotic Vision System; filed 26 June 1986.
Patent Application 884,143: Interpenetrating-Network Polymeric Electrolytes: filed 30 June 1986.
Patent Application 887,165: Glass-Lined Pipes; filed 1 July 1986.
Patent Application 887,166: Metallization for Hermetic Sealing of Ceramic Modules: filed 1 July 1986.
Patent Application 887,407: Fabrication of Hollow, Cored, and Composite Shaped Parts from Selected Alloy Powders; filed 2 July 1986.

Patent Application 890,201: Apparatus and Method for Stirring Fluid Borne Particles; filed 12 July 1986.
Patent Application 901,710: Scaled-Up Production of Lipo-Some-Encapsulated Hemoglobin; filed 29 August 1986.

Dated: June 3, 1987.

Jane M. Virga,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 87-13052 Filed 6-8-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Affordability and Availability of New Technology will meet on June 17 and 18, 1987. The meeting will be held at the Center for Naval Analysis, 4401 Ford Avenue, Alexandria, VA 2230-20268 in conference room 122. The meeting will commence at 8:30 A.M. and terminate at 4:30 P.M. on June 17 and 18, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to address the impact of the trend toward offshore procurement on the ability of U.S. industry to mobilize for production in time of national crisis. The agenda will include technical briefings and discussions related to better analytical approaches to the assessment of total system costs, identification of methods to provide incentives for both the Navy and industry to provide new technology at a lower cost while assuring producability in time of national crisis, and identification of the most promising areas for more effective procurement of advanced technologies at lower cost. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classisfied and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: June 3, 1987.

Jane M. Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

[FR Doc. 87-13051 Filed 6-8-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.129D]

Notice Inviting Applications for New Awards Under the Rehabilitation Continuing Education Program for Fiscal Year 1987

Purpose: This program supports training centers that serve either a Federal region or another multi-State geographical area and provide for a broad integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel. Pursuant to 34 CFR 385.33(a), fiscal year 1987 funds are available under this program for the support of new project(s) in Department of Education Region V only.

Deadline for Transmittal of Applications: July 9, 1987.

Applications Available: June 10, 1987.

Available Funds: $404,050.

Estimated Range of Awards: $202,025-$404,050.

Estimated Number of Awards: 1-2.

Project Period: Not to exceed 12 months.

Applicable Regulations: (a) Regulations governing the Rehabilitation Continuing Education Program (34 CFR Parts 385 and 389); and (b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

For Applications or Information Contact: Mr. Terry Conour, Acting RSA Regional Commissioner, Department of Education, Office of Special Education and Rehabilitative Services, 300 South Wacker Drive, 15th Floor, Chicago, Illinois 60606. Telephone: (312) 886-5372.

Program Authority: 29 U.S.C. 774.

Dated: June 3, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87-13113 Filed 6-8-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.129]

Notice Inviting Applications for New Awards Under the Rehabilitation Long-Term Training Program for Fiscal Year 1987

Purpose: This program provides grants to States and other public and private agencies and organizations, including institutions of higher education, to train personnel for employment in public and private agencies involved in the rehabilitation of individuals with physical and mental disabilities.

Deadline for Transmittal of Applications: July 24, 1987

Applications Available: June 12, 1987

Range of Available Funds: $4,760,000 to $7,190,000

Rehabilitation Medicine, $550,000 to $850,000
Prosthetics and Orthotics, $350,000 to $500,000
Vocational Evaluation and Work Adjustment, $800,000 to $1,200,000
Rehabilitation Facility Administration, $200,000 to $300,000
Rehabilitation of the Blind, $350,000 to $500,000
Rehabilitation of the Deaf, $200,000 to $300,000
Job Placement and Job Development, $100,000 to $200,000
Occupational Therapy, $80,000 to $120,000
Rehabilitation Administration, $350,000 to $550,000
Rehabilitation of the Mentally Ill, $200,000 to $300,000
Speech-Language Pathology and Audiology, $200,000 to $300,000
Independent Living, $150,000 to $250,000
Client Assistance Program Training, $80,000 to $120,000
Rehabilitation Engineering, $350,000 to $500,000
Supported Employment, $800,000 to $1,200,000

A separate Notice of Proposed Priority and Notice Inviting Applications for New Awards under the Rehabilitation Long-Term Training Program for fiscal year 1987 were published in the Federal Register on May 14, 1987 for Rehabilitation Counseling. With the exception of Rehabilitation Counseling, funds will be available for the award of new grants in only those rehabilitation long-term training fields designated in this notice.

Estimated Average Size of Awards: $86,000

Estimated Number of Awards: 55-83

Project Period: Not to exceed 36 months

Applicable Regulations: (a) The regulations governing the Rehabilitation Long-Term Training (34 CFR Part 386), as proposed to be modified by a notice of proposed rulemaking published on May 27, 1987 (52 FR 19822). (Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made in the final regulations when published in final form, applicants will be given an opportunity to revise or resubmit their applications.); and (b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

For Applications or Further Information Contact: Mary Vest, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3332 (Switzer Building, M/S—2312), Washington, DC 20202, Telephone: (202) 732–1343.

Program Authority: 29 U.S.C. 774.

Dated: June 3, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–13114 Filed 6–8–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.117P]

Notice Inviting Applications for New Awards Under the Research and Development Centers Program for FY 1987

Purpose: To support additional activities in existing Office of Educational Research and Improvement (OERI) research and development centers related to evaluation and school indicators, including testing and measurement.

Eligibility: Only existing Research and Development Centers under 34 CFR Parts 706 and 708 are eligible for an award under this competition.

Deadline for Transmittal of Applications: July 10, 1987.

Applications Available: June 9, 1987.

Available Funds: $300,000.

Estimated Average Size of Award: $300,000.

Estimated Number of Awards: 1.

Project Period: Up to 3 years.

Applicable Regulations: (a) The regulations governing Regional Educational Laboratories and Research and Development Centers Program at 34 CFR Parts 706 and 708, and (b) the Education Department General Administrative Regulations at 34 CFR Parts 74, 75, 77, and 78.

Priorities: From the list of priorities in 34 CFR 706.12, the Secretary has chosen as an absolute priority evaluation and school indicators, including testing and measurement (706.12(g)). Only those applications that propose a research activity addressing this absolute priority will be considered.

Within this absolute priority, the Secretary particularly invites applications that propose to develop and validate scales or indices that will capture changes in school or classroom practices associated with State or local education reform initiatives, such as increasing subject matter and graduation requirements, changing the length of class periods or the school year, mandating curriculum changes, and improving incentive systems for the delivery of classroom instruction. In addressing these invitational priorities, the Secretary encourages applicants to consider such issues as the degree of implementation of the reform policies, the effect of the source or origin of the policy on its implementation and influence, and inter-state comparisons of these issues. However, applications meeting these invitational priorities will not receive an absolute or a competitive preference over applications which do not meet these invitational priorities.

Weighting for Selection Criteria: The program regulations at 34 CFR 706.31(e) authorize the Secretary to distribute an additional 15 points among the criteria described in § 708.32 to bring the total of possible points to a maximum of 100 points. For the purposes of this competition, the Secretary will distribute the additional points as follows:

Plan of operation (708.32(c)). Five (5) additional points will be added for a possible total of 25 points for this criterion.

Quality of key personnel (708.32(d)). Five (5) additional points will be added for a possible total of 25 points for this criterion.

Budget and cost effectiveness (708.32(e)). Five (5) points will be assigned to this criterion for a possible total of 5 points for this criterion.

For Applications or Information Contact: James Fox, OERI, Office of Research, Room 621, 555 New Jersey Avenue, NW., Washington, DC 20208–1430, (202) 357–6234.

Program Authority: 20 U.S.C. 1221e.

Dated: June 4, 1987.

Ronald Preston,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 87–13115 Filed 6–8–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.129Z]

Notice Inviting Applications for New Awards Under the State Vocational Rehabilitation Unit In-Service Training Program for Fiscal Year 1987

Purpose: This program supports special projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas which will enable State unit personnel to improve their ability to provide vocational rehabilitation services to individuals with severe disabilities. Pursuant to 34 CFR 385.33(a), fiscal year 1987 funds are available under this program for the support of new projects in Department of Education Regions I, V, and IX only.

Deadline for Transmittal of Applications: July 24, 1987

Applications available: June 10, 1987

Available Funds:

Region I—$245, 965
Region V—$243,499
Region IX—$149,433

Estimated Range of Awards: $4,000–$90,000

Estimated Average Size of Awards: $33.626

Estimated Number of Awards:

Region I—9
Region V—5
Region IX—5

Project Period: Not to exceed 36 months

Applicable Regulations: (a) Regulations governing the State Vocational Rehabilitation Unit In-Service Training Program (34 CFR Parts 385 and 388); and (b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

For Applications or Information Contact:

Region I—Mr. John J. Szufnarowski, RSA Regional Commissioner, Department of Education, Office of Special Education and Rehabilitative Services, John F. Kennedy Federal Building, Room E–400 Government Center, Boston, Massachusetts 02203, Telephone: (617) 565–2637.

Region II—Mr. John Conti, Acting RSA Regional Commissioner, Department of Education, Office of Special Education Rehabilitative Services, 26 Federal Plaza, Room 4104, New York, New York 10278, Telephone: (212) 264–4016.

Region IX—Mr. Anthony S. DeSimone, RSA regional Commissioner, Department of Education, Office of Special

Education and Rehabilitative Services, Federal Office Building, Room 480, 50 United Nations Plaza, San Francisco, California 94102, Telephone: (415) 556-7333.

Program Authority: 29 U.S.C. 774
Dated: June 3, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87-13116 Filed 6-8-87; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Intent To Repay to the Oregon Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the Secretary of Education (Secretary) intends to repay to the State educational agency (SEA), the Oregon Department of Education, an amount equal to 75 percent of the funds recovered by the Department of Education as a result of a final audit determination. This notice describes the basis on which this sum was determined, the SEA's plans for the use of the repaid funds, and the terms and conditions under which the Secretary intends to make the funds available and invites comments on the proposed grantback.

DATE: All written comments must be received on or before July 9, 1987.

ADDRESS: All written comments should be submitted to Mr. William L. Stormer, Director, Division of Program Support, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 2151, MS-6275), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: William L. Stormer: Telephone: (202) 732-4757.

SUPPLEMENTARY INFORMATION:

A. Background

On October 12, 1977, the former Deputy Commissioner of Elementary and Secondary Education issued a final audit determination that required the SEA to repay $148,555 of fiscal years 1977 and 1978 funds awarded by the SEA to Eastern Oregon State College for allegedly unallowable teacher training costs over a two-year period. On September 30, 1981, the Assistant Secretary of Elementary and Secondary Education issued a final determination on a second audit that required the SEA to repay $20,526.32 of fiscal year 1981 funds that allegedly had been overallocated to the SEA because of an overcount of the number of full-time and part-time eligible migratory children residing in the State. Both audit determinations concerned the SEA's use of Migrant Education Program (MEP) funds received under Title I of the Elementary and Secondary Education Act of 1965, as amended. The SEA appealed both audit determinations to the Education Appeal Board (EAB). On June 27, 1985, while the appeals were pending, the SEA and the Department of Education executed an agreement to settle the audit claims. As a result of that agreement, the Oregon Department of Education repaid $50,000 to the Department. The settlement did not formally allocate the sum between the two claims.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available to that program and may arrange to repay the SEA an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA that resulted in the audit determination have been corrected, and the SEA is in all other respects in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program, and to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement, in accordance with the SEA's plan, would serve to achieve the purpose of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of $37,500 and has submitted plans for the use of grantback funds to meet the special educational needs of eligible migratory children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1) (20 U.S.C. 3801 *et seq.*). The final audit determination was to disallow expenditures the SEA made at Eastern Oregon State College from its Title I migrant education program funds. Since Chapter 1 has superseded Title I, the SEA's proposal reflects the requirements in Chapter 1—a program similar to Title 1, designed to serve eligible migratory children. The SEA no longer operates a migrant education project at that college.

Proposed Oregon Migrant Education Project

The proposed summer project is designed to meet the special needs of children who are not only migratory but also handicapped. At least 200 currently migratory children with handicapping conditions will receive additional needed health, social, and other support services that will enable them to participate more effectively in the other educational services provided by the Oregon Chapter 1, migrant education program. The project will also provide parents of these 200 children with intensive training that will enable them to understand the nature and extent of the handicapping conditions of their children and increase their knowledge about available support services in Oregon or in other States to which they may migrate. This project will be targeted in four counties which are in Area 1 and 4 of the Oregon Migrant Student Services plan; Marion, Polk, Yamhill, and Malheur. Funds from this project are the only resources readily available to provide the proposed services.

Supervision for this project will be provided by the Coordinator of Chapter 1 migrant programs for the SEA in collaboration with the staff of the Migrant Education Service Center.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met. The $50,000 settlement agreement, which permitted the SEA to satisfy its liability in both audit findings, included $5,000 that the Secretary attributes to an over-allocation of funds to the State for the fiscal year 1981. This amount, therefore, is not included in the determination for the grantback arrangement.

These determinations are based upon the best information available to the

Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish a notice in the **Federal Register** of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Oregon SEA under a grantback arrangement. The grantback award would be in the amount of $33,750, which is 75 percent—the maximum percentage authorized by the statute—of that portion of the $50,000 settlement that the Secretary has concluded is attributable to claims arising from disallowed expenditures at Eastern Oregon State College.

F. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

The SEA agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plans that the SEA submitted and any amendments to those plans that are approved by the Secretary; and

(c) The budgets that were submitted with the plans and any amendments to the budgets that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1988, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, will, not later than December 31, 1988, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budgets, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) During the course of the project, the SEA will consult with both the parent or guardian of each migratory child to be served and the respective LEA to assure that each child will receive, on an ongoing basis, the maximum education and support related assistance available under Part B of the Education of the Handicapped Act, as amended, and other Federal or State programs to which he or she may be entitled. The SEA will include as part of final report information that demonstrates both that such consultation has occurred and that the respective LEAs are taking appropriate steps to assure that the migrant children served by the project are receiving the assistance to which they may be entitled through such other programs.

(5) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance No: 84.011, Migrant Education Basic State Formula Grant Program)

Dated: June 4, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-13112 Filed 6-8-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the supply of 1.88 grams of uranium depleted in the isotope uranium-235, and 7.40 grams of uranium enriched to 99.11 percent in the isotope uranium-235 for use in dosimetry measurements, by the United Kingdom Atomic Energy Authority. Contract Number WC-EU-294 has been assigned to this transaction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: June 2, 1987.

For the Department of Energy.

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-13039 Filed 6-8-87; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate

Financial Assistance; Determination of Restricted Eligibility; American Statistical Association

AGENCY: Department of Energy.

ACTION: Notice of Solicitation for a Grant Application.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), eligibility for a grant has been restricted to the American Statistical Association (ASA), a widely recognized and highly prestigious professional society established to further statistical theory in numerous fields. The ASA sponsors the Committee on Energy Statistics which has provided EIA, primarily during biannual meetings over the past five years, with guidance in addressing key statistical, economic, and technical issues faced by EIA.

Eligibility: The ASA is a non-profit institution with unique assets. The membership of the ASA includes large numbers of highly-qualified and widely recognized statisticians, economists, and other professionals. The ASA can effectively and authoritatively disseminate invitations to participate in its membership. Therefore DOE has determined that it is appropriate to restrict eligibility in its solicitation.

Term: The term (project period) of the grant is expected to be three years.

FOR FURTHER INFORMATION CONTACT: Mr. Edmond J. Golden Jr., U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9512.

Stephen J. Michelsen,

Director, Contract Operations Division 'B', Office of Procurement Operations.

[FR Doc. 87-13038 Filed 6-8-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Action Taken on Consent Order; Wickett Refining Company

AGENCY: Department of Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199J that it has adopted as final the Consent Order with Wickett Refining Company (Wickett) executed on April 2, 1987, and published for comment in 52 FR 12235 on April 15, 1987. After an audit of Wickett's compliance with the federal petroleum price and allocation regulations, the Economic Regulatory Administration (ERA) asserted that, with regard to certain processing agreements during the period March through May 1976 to which Wickett was a party, the firm had violated the Entitlements Program regulations (10 CFR 211.67) and thereby had improperly benefited by approximately $700,000. The Consent Order resolves these matters and all civil and administrative disputes, claims and causes of action by DOE against Wickett concerning its compliance with the federal petroleum price and allocation regulations during the period August 1, 1973, through January 27, 1981. To remedy any violations by Wickett that may have occurred, Wickett has agreed to make a payment of $850,000 to the DOE. ERA will then initiate a special refund proceeding under 10 CFR Part 205, Subpart V. In that proceeding, any person who claims to have suffered injury from Wickett's asserted violations will have the opportunity to submit a claim to the Office of Hearings and Appeals.

As required by 10 CFR 205.199J, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to this Notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Harold Goldsmith, Office of Speical Counsel, Economic Regulatory Administration, RG–30, U.S. Department of Energy, Washington, DC 20585, (202) 585–4945.

Copies of the Consent Order may be obtained free of charge by written request to "Wickett Consent Order Request" at the above address or by calling Harold Goldsmith at the above telephone number. Copies may also be obtained in person at the same address or at the Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On April 15, 1987, DOE published notice in the **Federal Register**, Vol. 52 at page 12235, announcing the execution of a proposed Consent Order between Wickett and DOE. In compliance with DOE Regulations, that Notice and a Press Release issued April 29, 1987, summarized the Consent Order and the facts behind it. The Notice and the Press Release also gave instructions for obtaining copies of the Consent Order.

The Consent Order may be summarized as follows:

1. The Consent Order resolves all civil and administrative disputes, claims and causes of action by DOE against Wickett concerning its compliance with the federal petroleum price and allocation regulations for the period August 1, 1973, through January 27, 1981.

2. Wickett will pay $850,000 to the DOE within ten days of the effective date of this Consent Order. These funds will be deposited in a suitable account for distribution pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

3. Wickett and the DOE release each other from further liability for the matters covered by the Consent Order. DOE agrees not to seek penalties from the firm.

4. The Consent Order also provides details concerning further recordkeeping, enforcement of the Consent Order and further action in the event of concealment or misrepresentation. The Consent Order does not constitute an admission by Wickett or a finding by DOE of a violation of the federal petroleum price and allocation regulations.

As noted, no comments were received in response to the Notice of the Proposed Consent Order. Accordingly, ERA has determined to adopt the Proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199J. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC, on June 1, 1987.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 87–13040 Filed 6–8–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–442–000 et al.]

Electric Rate and Corporate Regulation Filings; Duke Power Co. et al.

June 3, 1987.

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER87–442–000]

Take notice that on May 21, 1987, Duke Power Company tendered for filing a Notice of Cancellation effective July 19, 1987, Rate Schedule FERC No. 236, effective date July 1, 1967.

A copy of the proposed cancellation has been served upon Mr. Lynn Lanier, General Manager, Pageland, SC.

Comment date: June 18, 1987, in accordance with Standard Paragraph E at the end of this notice

2. Appalachian Power Company

[Docket No. ER87–451–000]

Take notice that Appalachian Power Company (Appalachian) on May 27, 1987, tendered for filing a modification to its May 9, 1984 Electric Service Agreement (Agreement) with the Central Virginia Electric Cooperative, Inc., (CVEC). The modification revises the Agreement between the parties to reflect the addition of a new electric service delivery point. Appalachian has requested an effective date of May 21, 1987.

Copies of the filing have been provided to the Virginia State Corporation Commission and to CVEC.

Comment date: June 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Canal Electric Company

[Docket No. ER87–453–000]

Take notice that on May 27, 1987, Canal Electric Company ("Canal") tendered for filing, pursuant to § 35.13 of the Commission's Regulations, three proposed Capacity Acquisition Commitments ("Commitments") dated May 7, 1987 by and between itself and Cambridge Electric Light Company and Commonwealth Electric Company, as follows:

(1) Commitment concerning Phase I of the Hydro-Quebec Project.

(2) Commitment concerning Phase II of the Hydro-Quebec Project.

(3) Commitment concerning acquisition of electric power from Connecticut Light and Power Company

and/or Western Massachusetts Electric Company.

The purpose and effect of all three Commitments is to supplement the Capacity Acquisition Agreement ("Agreement"), Canal's Rate Schedule FERC No. 21, by Commiting Canal to secure electricity from the Hydry-Quebec Projet and from Connecticut Light and Power Company and/or Western Massachusetts Electric Company in accordance with the terms of the Agreement and for the benefit of Cambridge and Commonwealth. Canal has requested that the Commission waive its regulations for good cause shown and to the extent necessary to permit the Commitments to become effective as shown below:

(1) Hydro-Quebec Phase I: October 1, 1986, the date upon which service began.

(2) Hydro-Quebec Phase II: August 1, 1987, an even date approximately sixty days following filing.

(3) Connecticut Light and Power Company and/or Western Massachusetts Electric Company: May 1, 1987, the date upon which service began.

Canal states that it has served copies of the tendered filing upon Cambridge, Commonwealth and the Massachusetts Department of Public Utilities.

Comment date: June 17, 1987, in accordance with the Standard Paragraph E at the end of this document.

4. Carolina Power & Light Company

[Docket No. ER87-452-000]

Take notice that Carolina Power & Light Company on May 27, 1987, tendered for filing an amendment made to the Power Coordination Agreement (PCA) between the Company and the North Carolina Eastern Municipal Power Agency (NCEMPA). The Amendment amends section 4.1(A), section 4.2(A), Item 8 on Exhibit PCA-I-30 and Item 6 on Exhibit PCA-I-47.

The Amendment is necessary in order to reflect the delivery of capacity and energy from the Kerr Project to Southeastern Power Administration's (SEPA) preference customers who are participants in NCEMPA. These deliveries are made by Company pursuant to a new contract between the United States of America and Carolina Power & Light Company dated January 23, 1987. The Amendment to the PCA provides for the credit on an hourly basis of capacity and energy from the Kerr Project to all qualifying participants of NCEMPA. Delivery of power under this contract commended at 12:01 A.M., February 1, 1987. It is proposed that the Commission waive its 60-day noitce requirement and allow the Amendment submitted herewith to become effective at 12:01 A.M. on February 1, 1987.

Comment date: June 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER87-455-000]

Take notice that on May 27, 1987, Idaho Power Company tendered for filing pursuant to section 205(c) of the Federal Power Act and in accordance with the provisions of § 35.30 of the Commission's Rules of Practice and Procedure, Copies of Idaho's agreement with and/or objections to the Average System Cost adjustments made by BPA in its Average System Cost Report for Idaho Power's Oregon residential jurisdiction.

This report contains:

1. BPA's Average System Cost Report for Idaho Power Company—Oregon Jurisdiction, dated May 5, 1987.

2. An Appendix 1 for the Company's Idaho jurisdiction which demonstrates an ASC of 17.45 mills per kwh pursuant to BPA's 1984 ASC Methodology. Also attached are supplemental schedules which detail the allocation and functionalization of each cost item referenced in the Appendix 1. Included are detailed tables which indicate the jurisdictional separation study results using the same allocation methods and procedures used by the Oregon Public Utility Commission in its Order No. 86-950, and reviewed by BPA in its ASC Report dated May 5, 1987.

Comment date: June 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Southern Utilities Company

[Docket No. ER87-454-000]

Take notice that on May 27, 1987, Iowa Southern Utilities Company (Iowa Southrn) tendered for filing a Facilities and Operating Agreement Ottumwa Generating Station Unit 1 Electric Transmission and Substation Facilities (Agreement), dated May 22, 1981, between Iowa Southern, Iowa Public Service Company (Public Service), Iowa-Illinois Gas and Electric Company (Iowa-Illinois), Iowa Power and Light Company (Iowa Power), and Iowa Electric Light and Power Company (Iowa Electric).

The Agreement sets forth the terms and conditions for the joint ownership, construction, operation and maintenance of Ottumwa Generating Station Unit 1 Electric Transmission and Substation Facilities (Unit 1 Transmission). The Agreement also provides for the determination and establishment of capacity schedules in Unit 1 Transmission and for assignment of such capacity schedules by a party to another party or to a non-party, including the associated rights, obligations and charges. The Agreement also sets forth the procedure for the computation of each party's share of capacity losses and energy losses on Unit 1 Transmission and Iowa Southern's Transmission System.

Iowa Southern requests a waiver of the Commission's notice requirement and Iowa Southern requests that the filing be permitted to become effective May 22, 1987.

Comment date: June 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Power & Light Company

[Docket No. ER87-275-000]

Take notice that on May 22, 1987, Puget Sound Power & Light Company ("Puget") tendered for filing pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 CFR 385.602), an Offer of Settlement regarding a Revised Supplement providing for a rate schedule change for transmission service provided by Puget to the Bonneville Power Administration ("BPA") under Supplement No. 5 to the General Transfer Agreement between Puget and BPA (Contract No. 14-03-001-11487). Puget states that the Offer of Settlement indicates BPA's agreement to the rates contained in the Revised Supplement, and resolves all issues between Puget and BPA with respect to the above-referenced docket.

Copies of this filing will be served upon all parties to the above-referenced docket in accordance with section (d) of Rule 602.

Comment date: June 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Western Massachusetts Electric Company

[Docket No. ER87-707-005]

Take notice that on May 26, 1987, Western Massachusetts Electric Company (WMECO) tendered for filing an amendment to its refund compliance report filed on May 14, 1987 in accordance with the Commission's Order, issued March 30, 1987. WMECO states that on April 23, 1987 is made refunds to its customers with interest accrued through that date for the difference between the Company's originally filed rates and the compliance rates. WMECO states that in the process of preparing the May 14th refund compliance report, an error was discovered in the demand charge. That was reported in the May 14th report.

The impact of this error had the effect of overstating refunds (including interest) by $6,315. As noted in the May 14th filing, WMECO submitted revised refund notifications to its customers on May 18, 1987 to correct the error. WMECO states that by this submittal it is reporting on the corrected funds.

This report includes the following:

Attachment A—Monthly billing determinants and revenues at proposed and compliance rates for the period April 1, 1986 through April 23, 1987.

Attachment B—Computation of the monthly refunds, including interest, for the monthly billings for the period April 1, 1986 through April 23, 1987.

Comment date: June 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Wahsington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-13081 Filed 6-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF84-399-005, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Viking Energy of McBain Limited Partnership, et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

June 2, 1987.

Take notice that the following filings have been made with the Commission.

1. Viking Energy of McBain Limited Partnership

[Docket No. QF84-399-005]

On May 14, 1987, Viking Energy of McBain Limited Partnership (Applicant), of 4008 West Wackerley Road, Midland, Michigan 48640 submitted for filing an application for recertification of a facility as a qualifying 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.

Under the instant application, recertification is sought due to a decrease in the net electric power production capacity of the facility from 18.5 MW to 16.3 MW. Also, the usage of natural gas will be reduced to a maximum of 9% of the total annual energy input of the facility during any calendar year period, and wood will be burned in a travelling grate boiler instead of a two stage burner. Installation of the facility is expected to begin during 1987.

2. Viking Energy of Lincoln Limited Partnership

[Docket No. QF84-349-005]

On May 14, 1987, Viking Energy of Lincoln Limited Partnership (Applicant), of 4008 West Wackerley Road, Midland, Michigan 48640 submitted for filing an application for recertification of a facility as a qualifying 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.

Under the instant application, recertification is sought due to a decrease in the net electric power production capacity of the facility from 18.5 MW to 16.3 MW. Also, the usage of natural gas will be reduced to a maximum of 9% of the total annual energy input of the facility during any calendar year period, and wood will be burned in a travelling grate boiler instead of a two stage burner. Installation of the facility is expected to begin during 1987.

3. American REF-FUEL Company of Oyster Bay

[Docket No. QF87-427-000]

On May 19, 1987, American REF-FUEL Company of Oyster Bay (Applicant), of P.O. Box 3151, Houston, Texas 77253 submitted for filing an application for certification of a facility as a qualifying 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 small power production facility will be located in Oyster Bay, New York. The facility will consist of two (2) waterwall steam generators and one turbine-generator. The net electric power production capacity will be 27 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas and oil will be used for ignition, start-up, testing, flame stabilization, and temperature control. However, such fossil fuel uses will not in aggregate exceed approximately 9% of the total energy input of the facility during any calendar year period. Construction of the facility will begin in the summer of 1988.

4. Onondaga Cogeneration Limited Partnership

[Docket No. QF87-429-000]

On May 21, 1987, Onondaga Cogeneration Limited Partnership (Applicant), of 58 West 88th Street, New York, New York 10024, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined-cycle cogeneration facility will be located in Onondaga County, New York. The facility will consist of a combustion turbine generating unit, a heat recovery steam generator and an extraction/condensing steam turbine generating unit. Steam recovered from the facility will be used for space heating and cooling and drying and sanitizing in an industrial process. The net electric power production capacity of the facility will be 79 MW. The primary energy source will be natural gas. Installation of the facility will begin in 1988.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to be 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. 87–13094 Filed 6–8–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP87–70–000]

East Tennessee Natural Gas Co.; Filing of Changes in Rates

June 3, 1987.

Take notice that on May 29, 1987, East Tennessee Natural Gas Company (East Tennessee) tendered for filing changes to Original Volume No. 1 of its FERC Gas Tariff to be effective on July 1, 1987, consisting of the following revised tariff sheets:

Substitute Twenty-seventh Revised Sheet No. 4
First Revised Sheet Nos. 111, 139, 140 and 278
Second Revised Sheet Nos. 120, 192, 261 and 262
Fourth Revised Sheet No. 124
Fifth Revised Sheet No. 121

The changes would increase non-gas revenues from jurisdictional sales by $7,589,263 based on the test period consisting of the twelve months ended February 28, 1987. East Tennessee states that the increased rates are required to reflect increased plant and related expenses, a decline in sales volumes for the historic market and an increase in volumes due to the addition of the new CD sales customer, changes in the cost of materials, supplies, wages and services, and other costs required to operate and maintain its pipeline system, and a claimed overall return of 14.12%. East Tennessee has also included in this filing Alternate Substitute Twenty-seventh Revised Sheet No. 4 to be effective in the event that the Commission in Docket No. RP82–124 orders that East Tennessee's minimum commodity bill be eliminated, thereby reducing East Tennessee's commodity billing determinants.

The changes also incorporate revisions to the tariff that are necessary to conform to East Tennessee's method of allocating demand costs on the basis of contract demands, to update its Index of Purchasers to reflect authorized revisions to various of its customers' contract demands, to conform the payment due date to the billing date provided for in the tariff, to clarify the form of Gas Sales Contract under the CD Rate Schedule, and to update Annual Quantity Entitlements and D_2 renomination levels to reflect test period D_2 volumes.

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 June 10, 1987. 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. 87–13092 Filed 6–8–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–2–2–000]

East Tennessee Natural Gas Co., Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 3, 1987.

Take notice that on May 29, 1987, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Twenty-Seventh Revised Sheet No. 4 and First Revised Sheet No. 123A to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1987.

East Tennessee states that the purpose of these revised tariff sheets is to reflect PGA rate adjustments based on its anticipated cost of purchased gas and reflects (1) a rate change filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., in Docket No. TA87–1–9 and (2) purchases from various local suppliers. The filing also reflects revisions to certain provisions of section 22.4 of the General Terms and Conditions of East Tennessee's FERC Gas Tariff. East Tennessee respectfully requests that the Commission grant any waivers of its regulations required in order to make these tariff sheets effective as proposed.

East Tennessee states that copies of the filing have been mailed to all of its jurisdiction customers and affected state regulatory commissions.

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 accord with Rules 211 and 214 of the Commission's rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1987. 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. 87–13086 Filed 6–8–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–4–5–000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 3, 1987.

Take notice that on May 29, 1987, Midwestern Gas Transmission Company (Midwestern) filed Twenty-Fifth Revised Sheet No. 5 to Original Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1987.

Midwestern states that the purpose of the filing is to reflect for its Southern System PGA rate adjustments based on (1) rate changes filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and (2) purchases from local producer suppliers.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

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. All such motions or protests should be filed on or before June 10, 1987. 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 interevene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–13087 Filed 6–8–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85-210-003]

Ringwood Gathering Co.; Filing of Revised Tariff Sheets

June 3, 1987.

Take notice that on June 1, 1987, Ringwood Gathering Company tendered for filing Eleventh Revised Sheet No. 4 and Forty-First Revised Sheet PGA-1. Ringwood Gathering Company states that these sheets will become effective on July 1, 1987, to reflect a decrease in its sale for resale rate. This decrease reflects a change in the maximum corporate federal tax rate.

Ringwood Gathering Company further states that this filing is being made only to restate the base tariff rate to reflect changes in federal taxation and to include language in its tariff related to the tax tracker provision contained in Appendix B of the Order Consolidating Proceedings and Accepting Contested Offer of Settlement issued July 2, 1986 by the Federal Energy Regulatory Commission. No other changes are contained herein.

Ringwood Gathering Company states that copies of this filing were served upon Williams Natural Gas Company, Oklahoma Natural Gas Company and interested state commissions.

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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1987. 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. 87-13083 Filed 6-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-86-004]

Sabine Pipe Line Co., Compliance Filing

June 3, 1987.

Take notice that on June 1, 1987, Sabine Pipe Line Company (Sabine) tendered for filing Third Revised Sheet Nos. 20 and 400 to its FERC Gas Tariff, First Revised Volume No. 1. Sabine states that this filing is made to comply with Article V of its Stipulation and Agreement dated November 25, 1986, and the Commission's letter order dated January 13, 1987. The revised tariff sheets reflect rates giving effect to the statutory federal income tax rate change to 34 percent effective July 1, 1987, and the amortization of Sabine's excess tax in its deferred income tax reserve.

Sabine has mailed copies of this filing to each affected service customer.

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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1987. 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. 87-13089 Filed 6-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-6-000]

Sea Robin Pipeline Co; Filing of Revised Tariff Sheets

June 3, 1987.

Take notice that on May 29, 1987, Sea Robin Pipeline Company (Sea Robin) tendered for filing to its Federal Energy Regulatory Commission (FERC or Commission) Gas Tariff as part of Original Volume No. 1 the following tariff sheets:

Forty-Seventh Revised Sheet No. 4,
Tenth Revised Sheet No. 4-B,
Twenty-Fifth Revised Sheet No. 4-A,
Second Revised Sheet No. 4-A1,
Second Revised Sheet No. 4-A2,
First Revised Sheet No. 7-A,
Second Revised Sheet No. 7-C,
First Revised Sheet No. 17,
Second Revised Sheet No. 19, and
First Revised Sheet No. 8.

Sea Robin also tendered for filing to its FERC Gas Tariff Original Volume No. 2, Thirtieth Revised Sheet No. 127-D and Thirtieth Revised Sheet No. 135-C.

The proposed effective date for each of the preceding tariff sheets is July 1, 1987. Tariff Sheet Nos. 4, 4-B, 127-D, and 135-C are filed pursuant to Sea Robin's Purchase Gas Cost Adjustment sections of its tariff. Tariff Sheet Nos. 4, 127-D, 135-C, 4-A, 4-A1, and 4-A2 are filed pursuant to the settlement in Docket No. RP85-167 which was approved by Commission order issued February 25, 1986, which provides for a Tax Tracker to reflect the lower 1987 Tax Rate. Sea Robin filed Sheet Nos. 7-A, 7-C, 17, and 19 to reflect changes in Sea Robin's tariff language to provide for an annual surcharge requested in this filing. Sheet No. 8 is filed to remove First Use Tax tariff language pursuant to Commission order in Docket No. TA87-1-6-000, 001. The proposed tariff sheets reflect a 13.31¢ and 51.46¢ reduction in rates for sales at Erath and Pecan Island, respectively.

Sea Robin states that these revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state regulatory agencies. Transportation customers are being mailed copies of the transportation tariff sheets and the transmittal letter.

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 § 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before June 10, 1987. 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. 87-13084 Filed 6-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-8-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

June 3, 1987.

Take notice that on May 29, 1987, South Georgia Natural Gas Company (South Georgia) tendered for filing Forty-First Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. This tariff sheet and supporting information is being filed with a proposed effective date of July 1, 1987, pursuant to the Purchased Gas Cost Adjustments provisions set out in Section 14 of South Georgia's tariff.

South Georgia states that its Forty-First Revised Sheet No. 4 reflects a

decrease in the commodity component of 11.41¢ per MMBtu, an increase in the demand component of $2.219 per MMBtu, and a decrease of 11.23¢ per MMBtu in the Surcharge Adjustment presently in effect.

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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1987. 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. 87-13093 Filed 6-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-53-001]

Southern Natural Gas Co.; Compliance Filing

June 3, 1987.

Take notice that on May 27, 1987, Southern Natural Gas Company (Southern) tendered for filing Original Sheet Nos. 45E.3 and 45E.4 to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective May 1, 1987.

Southern states that the revised tariff sheets are in compliance with Ordering Paragraph (C) of the Commission's April 30, 1987 order in Docket No. RP87-53 and modify the new section 17.6 of Southern's FERC Gas Tariff permitting it to revise its rates on an interim basis in accord with the April 30, 1987 order.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1987. 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. 87-13090 Filed 6-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-9-000]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Rate Change Under Tariff Rate Adjustment Provisions

June 3, 1987.

Take notice that on May 29, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1987:

Second Revised Volume No. 1
Second Revised Sheet No. 20
Third Revised Sheet No. 21
Original Sheet Nos. 31 through 45
Original Volume No. 2
Third Revised Sheet No. 5

Tennessee states that the purpose of the revised tariff sheets is to reflect PGA rate adjustments pursuant to Article XXIII of the General Terms and Conditions of its FERC Gas Tariff. Tennessee also indicates that the tariff sheets set forth demand surcharges for recovering retroactive Order No. 94 payments in accord with Article VI of the Settlement Agreement (February 5, 1985) in Docket No. CP84-441, *et al.* In addition, Tennessee states that its filing reflects a Current Purchased Gas Cost Rate Adjustment applicable to the Demand Rate based on $3.9 million inventory carrying charges which Tennessee projects it will pay to ARCO Oil and Gas Company, a Division of Atlantic Richfield Company (ARCO) under an agreement which became effective April 16, 1987.

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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1987. 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. 87-13088 Filed 6-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 3, 1987.

Take notice that on May 29, 1987, United Gas Pipe Line Company (United) tendered for filing to its Federal Energy Regulatory Commission (FERC or Commission) Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Revised Seventy-Sixth Revised Sheet No. 4,
Fifteenth Revised Sheet No. 4-A,
Fifteenth Revised Sheet No. 4-B,
Revised Twentieth Revised Sheet No. 4-C, and
First Revised Sheet No. 74-L.

Tariff Sheets 4, 4-A, and 4-B and supporting information are being filed pursuant to sections 19, 21, 23, and 24 of United's Tariff. The proposed Sheet No. 4 reflects United's request to amortize the unrecovered gas cost over a twenty-four month period. Tariff Sheet No. 4-C is submitted pursuant to the letter order issued by the Office of Pipeline and Producer Regulations dated January 27, 1982 in Docket No. CP81-387-000. Tariff sheet 74-L reflects the removal of obsolete First Use Tax language from United's tariff. The proposed effective date of each preceding tariff sheet is July 1, 1987.

United states that the combination of the current adjustment decrease and the proposed two year deferral of unrecoverable purchase gas costs permits United's ongoing cost of gas to remain relatively sable over the six month PGA period.

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 §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before June 10, 1987. Protest 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. 87-13085 Filed 6-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-44-003]

Valero Interstate Transmission Co.; Compliance Filing

June 3, 1987.

Take notice that on May 27, 1987, Valero Interstate Transmission Company (Vitco) tendered for filing the following tariff sheets to its FERC Gas Tariff:

Original Volume No. 1

13th Revised Sheet No. 14
5th Revised Sheet No. 14.2

Original Volume No. 2

10th Revised Sheet No. 6

Vitco states that these tariff sheets are submitted pursuant to Article V of the "Stipulation and Agreement in Settlement of Rate Proceedings" approved by Commission Order issued October 3, 1986 in Docket No. RP86-44-000. These tariff sheets reflect a reduction equivalent to $.0018 per MMBtu to be effective July 1, 1987, to reflect the reduction of the Federal Income Tax rate from 46% to 34%.

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 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 10, 1987. Protest 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. 87-13091 Filed 6-8-87; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Pick-Sloan Missouri Basin Program-Eastern Division; Proposed Rate for Economy Energy

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of Proposed Rate for Economy Energy.

SUMMARY: The Billings Area Office (BAO) of the Western Area Power Administration (Western) markets capacity and energy from the Pick-Sloan Missouri Basin Program–Eastern Division and all revenues are applied to annual expenses and repayment of investment. Short-term surplus energy is sold under several classifications, one of which is Fuel Replacement Energy. The pricing for that energy is 85 percent of the cost of the saved fuel plus 50 percent of any other savings realized by the purchaser. Because of the present-day situation of highly competitive markets due to large regional surplus generation, as well as other factors, the pricing of Fuel Replacement Energy against saved fuel cost at a specific oil- or coal-fired unit is difficult. Western's objective remains that of utilizing short-term hydro surpluses to conserve fossil fuel, and proposes to adopt a pricing methodology which is based upon short-term energy pricing among power suppliers. A rate for Economy Energy is proposed to be adopted and continued until such time as Western may determine that it is no longer appropriate. Fuel Replacement Energy as a class of service will be retained. The proposed rate for Economy Energy is as follows:

The rate for Economy Energy is based upon the pricing for short-term energy sales among power suppliers within the interconnected systems.

DATES: Publication of this notice in the **Federal Register** begins a 30-day public comment and consultation period. Written comments on the proposal will be accepted until July 9, 1987.

ADDRESS: Written comments, as well as requests for further information, may be submitted to the following address throughout the consultation and comment period: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings, Montana 59101; Telephone: (406) 657-6532.

SUPPLEMENTARY INFORMATION: Difficulty is being encountered by BAO concerning the marketing of Fuel Replacement Energy under the existing pricing mechanism. BAO sells short-term surplus energy to entities that reduce power production from, or shut down, fossil-fueled power-plants to conserve fuel. Selling surplus energy at 85 percent of a plant's fuel cost provided a basis for pricing and could be adhered to when a specific unit could easily be identified. The price of the energy was directly related to the results obtained; i.e., saved fuel. However, present-day situations in the utility industry have changed from when the sale of Fuel Replacement Energy was initiated more than 20 years ago. Today, major utilities have numerous plants in daily operation which may vary in size from relatively small to extremely large and which have a wide range of operating costs. Because of multiple-unit operations, utilities often reduce power generation of more than one unit when buying energy from another utility. A utility's highest cost unit is not always the one reduced in power level because of such considerations as "take or pay" coal contracts or transmission constraints. Minimum power levels of large plants also affect which units may be backed-down.

Economic dispatch is evolving among utilities, as in the State of Iowa, where a newly formed organization will be conducting surplus energy transactions on the basis of the composite hourly costs of most of the investor-owned units in Iowa. Superimposed upon all of the factor noted above is the matter of large regional surpluses which results in a highly competitive market. Because of these, and other considerations, pricing of short-term energy transactions among power suppliers is driven by factors other than fuel savings at a particular plant. The effect is that it is increasingly more difficult, and less significant, for Western to base short-term surplus energy prices on fuel savings associated with a specific generating unit.

The BAO considers that many short-term surplus energy sale which have previously been conducted as Fuel Replacement Energy sales can be more appropriately conducted under the proposed category of Economy Energy. Conservation of fuel will still be accomplished and can be quantified as at present, but the energy prices will directly reflect all of the factors which establish short-term energy prices among thermal suppliers. As with all of BAO's short-term surplus energy sales, any transmission costs or losses beyond the limits of the Federal transmission system will be the responsibility of the purchaser. At present, a number of utilities interconnected with the Federal Transmission system do not purchase Fuel Replacement Energy. These utilities are able to purchase surplus energy from others at costs less than 85 percent of fuel savings for their relatively more costly units. In this regard, the adoption of Economy Energy as a class of service can be expected to increase the number of utilities to whom Western will market short-term surplus energy. However, it is not anticipated that it will provide a

revenue change from what would otherwise be obtained from Fuel Replacement Energy sales because there will not be an increase in the amount of energy for sale, nor is it anticipated that there will be significant change in hydro energy prices as a result of this change in ratesetting methodology.

Power rates for Western are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101, et seq.); the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particular section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 4856b(c)); and the acts specifically applicable to the project systems involved.

Amendments No. 1 to Delegation Order No. 0204–108, effective May 30, 1986 (51 FR 19744, May 30, 1986), delegated to the Administrator of Western, the authority to develop and place in effect, on a final basis, power and transmission rates for short-term sales; i.e., sale less than 1 year in duration.

After receipt of formal written comments, and due consideration, a final decision on the proposed rate will be made by the Administrator of Western pursuant to authority delegated to the Administrator in Delegation Order No. 0204–108, as amended. An explanation responding to the major comments and alternatives offered during the comment period shall accompany the final decision.

Environmental Compliance

Western will conduct an analysis of the proposed rate pursuant to the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations and section D of the Department of Energy Guidelines published in the **Federal Register** on February 23, 1982 (47 FR 7976)

Regulatory Flexibility Analysis

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 initital regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Under 5 U.S.C. 601(2), rates of services of particular applicability are not considered "rules" within the meaning of the Act. Since the rate is for services provided by Western from a particular project, no flexibility analysis is required.

Determination Under Executive Order 12291

The Department of Energy 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 17, 1981). In addition, Western has an exemption from sections 3, 4 and 7 of Executive Order 12291, and therefore, will not prepare a regulatory impact statement.

Issued at Golden, Colorado, May 27, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87–13067 Filed 6–8–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3215–6]

Sole Source Aquifer Final Determination; Prospect Hill Aquifer, Clarke County, VA

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given, that, pursuant to section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency has determined that the ground water system of the Stonehenge and Conococheague Limestone formations of the Appalachian Valley Region, which underlies part of Clarke County, Virginia in and around the towns of Boyce and Millwood (denominated the "Prospect Hill Spring Aquifer"), is the sole source or principal source of drinking water for that part of Clarke County, and that such aquifer, if contaminated, would create a significant hazard to public health. This determination is in response to a petition submitted by the Clarke County Board of Supervisors requesting that the Administrator of EPA make a determination pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), as amended, that the Prospect Hill Spring Aquifer is a sole or principal source of drinking water for the area. As a result of this action, Federal financially assisted projects in the designated area will be subject to EPA review pursuant to section 1424(e) to ensure that these projects are designed and constructed so that they do not contaminate this aquifer so as to create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 p.m. eastern standard time on June 23, 1987. This determination shall become effective on July 23, 1987.

ADDRESSES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region III, Drinking Water/Ground Water Protection Branch, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Stuart Kerzner, Drinking Water/Ground Water Protection Branch, U.S. Environmental Protection Agency, Region III at the above address or at (215) 597–3527.

SUPPLEMENTARY INFORMATION: Pursuant to section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), the Administrator of the U.S. Environmental Protection Agency has determined that the aquifer, known as the Stonehenge and Conococheague Limestone formations is the sole or principal source of drinking water for the areas in and around the towns of Boyce and Millwood. This aquifer supplies drinking water to public water systems and individual (single family) wells. Pursuant to section 1424(e), Federal financially assisted projects, constructed on the denominated "Prospect Hill Spring Aquifer" or within its stream flow source zone, will be subject to EPA review.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

(e) If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On June 27, 1985 the Board of Supervisors of Clarke County, Virginia, petitioned the Administrator of EPA, pursuant to section 1424(e) of the Safe Drinking Water Act, to designate portions of the Stonehenge and Conococheague Limestone formations in

Clarke County, Virginia, denominated "Prospect Hill Spring Aquifer", as the sole or principal source of drinking water for an area, which, if contaminated, would create a significant hazard to public health. A notice of receipt of this petition, together with a request for comments, was published in the **Federal Register** on October 31, 1985 (50 FR 45484).

The single public comment received recommended the designation. Because there were no requests for a public hearing and the one public comment received was favorable, a public hearing was deemed unnecessary. Upon review of the petition, EPA has determined that the stream flow source zone of the designated aquifer is a portion of the drainage basin of Page Brook.

II. Basis for Determination

On the basis of the information which is available to this Agency, the Administrator has made the following findings, which are the basis for the determination noted above:

1. The "Prospect Hill Spring Aquifer" underlying the designated area is the sole drinking water source for this area. The Clarke County Sanitation Authority derives above 35,000 gallons per day (gpd) from the Prospect Hill Spring to serve about 575 people. The water is chlorinated. The remaining residents in the designated area, approximately 125 people, have private wells, which supply, collectively, about 8,000 gpd. EPA has determined that the "Prospect Hill Spring Aquifer" supplies 100 percent of the drinking water to the population.

2. There is no existing alternative drinking water source which provides 50 percent or more of the drinking water to the designated area. This is because this area is rural in nature and the nearest existing alternative supply, the Shenandoah River, is at such a distance that its use would be technically and economically impractical.

3. The designated portion of the "Prospect Hill Spring Aquifer" is susceptible to contamination, through the recharge or stream flow source zone, from abandoned wells, septic tanks and agricultural activity in which fertilizers, herbicides, and pesticides are applied directly to the soil surface. In 1981 the local Health Department discovered the presence of high nitrate levels in two municipal water source wells in the Town of Berryville. Other tests revealed the presence of several types of herbicides in one well and two or three types of phenols which may originate from pesticides in both wells. These wells are recharged by the same stream flow zone as that of the "Prospect Hill Spring" aquifer. Since the ground water contamination can be difficult or impossible to reverse, and because this aquifer system is heavily relied upon for drinking water purposes by the general population, contamination of the aquifer would pose a significant hazard to public health.

III. Description of the Designated Portions of the Stonehenge and Conococheague Limestone Formations and their Stream Flow Source Zones

The Stonehenge formation of lower Ordovician age is approximately 700 to 800 ft. thick and consists predominantly of thin to medium bedded, light to dark gray pure limestone. The older Conococheague formation of Upper Cambrian Age, consists of gray to dark gray limestone with interbeds of dolomite and sandstone. The Conococheague is approximately 2300 ft. thick. The area over which Federal financially assisted projects will be reviewed includes both the designated portions of the Stonehenge and Conococheague formations, encompassing the "Prospect Hill Spring Aquifer" and their stream flow source zone. This designated area consists of the following: the area directly overlying the Stonehenge and Conococheague formations in and around the towns of Boyce and Millwood and their stream flow source zone. The stream flow source zone includes the drainage basin of Page Brook from its headwaters to a point on Page Brook 3000 feet north of its confluence with Roseville Run. The majority of this drainage basin consists of the Rockdale Run limestone and dolomite formation, with portions of the Oranda, Edinburgh, Martinsburg and Lincolnshire limestone and dolomite formations comprising the remainder.

The surface area of the "Prospect Hill Spring Aquifer" is about one square mile, and the area of the stream flow source zone is approximately twelve (12) square miles. An enlarged map of the area and all the information utilized in this determination, which includes the petition, written comments, and various technical publications, are available to the public and may be inspected during normal business hours at the office of the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

IV. Project Review

On September 29, 1977 EPA proposed regulations for implementing section 1424(e) of the Safe Drinking Water Act (42 FR 51620). The proposed regulations contain procedures for review of Federal financially assisted projects which could contaminate "sole or principal source" aquifers through the recharge zone so as to create a significant hazard to public health. They are being used as interim guidance until final regulations are promulgated.

EPA Region III is already working with the Federal agencies which may in the future sponsor projects in the area of concern in order to develop interagency procedures whereby EPA will be notified of proposed commitments for projects which could contaminate the designated aquifer. EPA will evaluate such projects, and, where necessary, conduct an indepth review, including soliciting public comments where appropriate.

Although the project review process cannot be delegated, the Regional Administrator in Region III will rely to the maximum extent possible upon any existing or future State and local control mechanisms in protecting the ground water quality of the aquifer underlying the designated area. Included in the review of any Federal financially assisted project will be coordination with the State and local agencies. Their comments will be given full consideration and the Federal review process will function so as to complement and support State and local mechanisms.

Dated: May 21, 1987.

James M. Seif,

Regional Administrator.

[FR Doc. 87-13078 Filed 6-8-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 86-484]

Reexamination of the Commission's Comparative Licensing, Distress Sale and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; further extension of initial comment deadline.

SUMMARY: This action grants a motion for a further extension of time for filing comments in response to the *Notice of Inquiry* in MM Docket No. 86-484 (Reexamination of the Commission's Comparative Licensing, Distress Sale and Classifications), 52 FR 596 (January 7, 1987). The initial comment filing deadline in this proceeding was originally May 7, 1987; it was later extended to May 28, 1987. The National Association of Black Owned

Broadcasters and other interested parties ("NABOB") filed a request for a further two-week extension of time, or until June 11, 1987. NABOB stated that a two-week extension is necessary for a variety of reasons, including recent Supreme Court decisions that may affect constitutional analysis of the issues, and the recent interest of additional organizations to associate themselves with NABOB's comments. Since the Commission was persuaded that the requested extension was reasonably necessary to facilitate the completion of the subject studies, the Commission is again extending the initial comment date in this proceeding. Consequently, a further extension of time for filing comments until June 11, 1987, was granted.

DATES: Comments are now due by June 11, 1987. Reply comments remain due by July 6, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

William H. Johnson,

Deputy Chief, Mass Media Bureau.

[FR Doc. 87-13073 Filed 6-8-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Darryl Madlock et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant	City/State	File No.	MM Docket No.
A. Darryl Madlock	Sioux Falls, SD	BPCT-861105KQ	87-168
B. John H. Echols	Sioux Falls, SD	BPCT-861105KV	
C. Harlan L. Jacobsen	Sioux Falls, SD	BPCT-870120KF	
D. Biz-Com, Inc	Sioux Falls, SD	BPCT-870120KG	
E. Kirkwood Broadcasting, Inc	Sioux Falls, SD	BPCT-870121KI	
F. Car M. Fisher	Sioux Falls, SD	BPCT-870121KJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Site availability	A, B, F
2. Air hazard	A, B, C, D, E
3. Multiple ownership	E
4. Comparative	A, B, C, D, E, F
5. Ultimate	A, B, C, D, E, F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87-13071 Filed 6-8-87; 8:45 am]

BILLING CODE 6712-01-M

Application for Consolidated Hearing; McDowell Broadcasting Co. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Linda J. McDowell d/b/a McDowell Broadcasting Company	Oxford, MS	BPH-850709MH	87-162
B. Matthew D. Wiggins, Jr	Oxford, MS	BPH-850710MX	
C. Brenda B. Toney and E. Ray Toney d/b/a/ Mississippi Broadcasters.	Oxford, MS	BPH-850711OH	
D. Lafayette County Broadcasting Corporation	Oxford, MS	BPH-850711OI	
E. April Wortham	Oxford, MS	BPH-850712UN	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Air Hazard	A, B, C, D, E
2. Comparative	A, B, C, D, E
3. Ultimate	A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The

complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–13070 Filed 6–8–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Peach State Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant	City/State	File No.	MMDocket No.
A. Amanda Kelton d/b/a/ Peach State Broadcasting, Ltd	Macon, Georgia	BPCT–861117KZ	87–166
B. G & D Communications, Inc	Macon, Georgia	BPCT–861210KI	
C. Thom E. Smith	Macon, Georgia	BPCT–870212KE	
D. Macon Urban Ministries, Inc. d/b/a/ Good News Television	Macon, Georgia	BPCT–870212KF	

2. Pursuant to section 309(e) of the Communications Act of 1934, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
Air hazard	B,C
Comparative	A, B, C, D
Ultimate	A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it aplies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–13069 Filed 6–8–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Pyramid Communications, Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Pyramid Communications, Ltd	Leland, Michigan	BPH–850712XY	87–165
B. Yolanda M. Juarez Naismith	Leland, Michigan	BPH–850712XZ	
C. Stone Communications, Inc	Leland, Michigan	BPH–850712Y9	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. Air Hazard	A
2. Comparative	ALL
3. Ultimate	ALL

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–13072 Filed 6–8–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Applications for Federal Deposit Insurance by Operating Non-FDIC Insured Institutions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Statement of policy.

SUMMARY: This statement of policy clarifies the guidelines for granting insurance to operating institutions.

EFFECTIVE DATE: May 28, 1987.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director, Division of Bank Supervision, Federal Deposit Insurance Corporation,

Washington, DC 20429, telephone (202) 898–6918.

SUPPLEMENTARY INFORMATION:

Statement of Policy Regarding Applications for Federal Deposit Insurance by Operating Non-FDIC Insured Institutions

Introduction

The FDIC has received a number of inquiries regarding its policies for granting insurance to operating institutions. These inquires frequently seek clarification as to the extent criteria for granting insurance to operating institutions differ from those applied to newly created institutions.

As a result, the FDIC hereby issues the following statement of policy. The policy specifically applies to applications for insurance which must be considered by the FDIC. These cases include applications by state chartered institutions that are not to be members of the Federal Reserve System, as well as applications involving a merger-type transaction between FDIC insured institutions and non-FDIC insured institutions when the resulting organization will be insured by the FDIC.

Eligibility for FDIC insurance will be considered by the Office of the Comptroller of the Currency for institutions seeking national charters, and by the Federal Reserve System for state chartered institutions seeking Federal Reserve membership. The standards applied by those agencies are generally consistent with those applied by the FDIC.[1]

Guidelines for Applications from Operating Institutions

The following guidelines apply whenever the FDIC is the approving agency, regardless of the form of transaction or interim steps that may be used in a particular instance:

(1) In each instance the FDIC must consider the financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not the bank's corporate powers are consistent with the purposes of the Federal Deposit Insurance Act. (See section 6, FDI Act: see also section 18(c)(5) of the FDI Act, which provides that in a merger-type transaction the FDIC must consider competitive factors, the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served.) Reference is directed to the FDIC's existing Statement of Policy on Applications for Deposit Insurance.

(2) Capital standards will be calculated using financial statements prepared in accordance with the Instructions—Consolidated Reports of Condition and Income in use of FDIC insured institutions at the time.

(3) An applicant must meet the minimum capital ratios established in Part 325 of the FDIC Regulations and any other regulations or guidelines pertaining to capital on or before effectiveness of insurance. Part 325 of the regulation currently provides that well-run institutions supervised by FDIC must have a ratio of total capital to total assets of at least 6.0 percent and primary capital to total assets of no less than 5.5 percent. Ratios higher than these may be required depending on the history and condition of the bank. Exceptions to these standards are not expected and will be considered only under very unusual and infrequent circumstances.

(4) The condition of an applicant institution will be determined from all available information and will generally include an on-site examination by FDIC examiners as part of the investigation process. Large or unusually complex organizations should take the time requirements of this process into consideration in planning for consummation of a transaction covered by this statement.

(5) A higher initial capital level may be required based on an analysis of the type and quality of the institution's assets, the kind of power exercised, the extent of interest rate sensitivity or other factors. The analysis will include consideration of such factors as whether the applicant is relatively new,[2] has embarked upon any substantive change in powers exercised or has experienced erratic growth patterns in recent years.

(6) As part of the application investigation process, the FDIC will discuss with an applicant its future operating intentions. If any change in the kind or level of activity being conducted is expected following or as a result of receiving FDIC membership, the applicant may be requested to submit a plan for maintaining adequate capital in the future. An acceptable plan in such circumstances may call for additional capital at inception and/or later as new activities grow or change.

(7) The FDIC expects, unless waived in writing by the FDIC, any applicant with more than $50 million in assets to have a full scope audit conducted by an independent public accounting firm prior to submitting an application and requests that a copy of the auditor's report be included as part of the application. The FDIC may require such an audit, on a case-by-case basis, for applicants with assets of $50 million or less.

(8) If the institution is exercising any powers not allowed by its proposed new form of organization or which are found not to be consistent with the purposes of the FDI Act, the application should contain an agreement and plan for eliminating them upon effectiveness of the insurance. In unique circumstances a longer phase-out period may be permitted if agreed to by both the FDIC and the appropriate chartering authority.

Other Matters

These guidelines are consistent with prior FDIC practice in granting insurance to new groups of operating institutions such as cooperative banks and industrial and thrift companies.

Some interested parties have asked whether the FDIC Statement of Policy on Capital which grants FDIC insured mutual savings banks up to five years to meet the minimum capital requirements would apply to thrift organizations seeking FDIC insurance. That policy easing capital requirements applies only to institutions already insured by the FDIC and was based on an assessment that the existing risk to the insurance fund could best be managed by a realistic program of reattaining adequate capital over time. This approach is not acceptable to FDIC for under capitalized institutions for which FDIC has no existing insurance responsibility. Such institutions will be expected to have adequate capital before the FDIC takes on a new risk by granting them insurance.

By order of the Board of Directors. Dated at Washington, DC, this 28th day of May, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–13079 Filed 6–8–87; 8:45 am]

BILLING CODE 6714–01–M

[1] See section 4(b) of the Federal Deposit Insurance Act (FDI Act) wherein the Comptroller of the Currency of the Board of Governors of the Federal Reserve System, where applicable, must certify that they have given consideration to the factors enumerated in section 6 of the FDI Act. Those factors are listed in Guideline #1 of this statement.

[2] The FDIC Statement of Policy on Applications for Deposit Insurance provides that the initial capital for new banks should be sufficient to provide a ten percent capital to asset ratio at the end of three years. This standard shall be applied to a recently organized institution applying for insurance as if it were a newly established bank.

FEDERAL HOME LOAN BANK BOARD

[No. 87-610]

FSLIC Insurance Premium

Dated: May 27, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation ordered the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one thirty-second of one percent of the total amount of the accounts of the insured members of each insured institution determined as of March 31, 1987.

EFFECTIVE DATE: June 9, 1987.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Director, Insurance Division, Office of the FSLIC, (202) 377-6620; or JoAnne Morris, Attorney, Office of General Counsel, (202) 377-7396, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one-eighth of one per centum of the total amount of the accounts of the insured members of such institution; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85-142, dated February 22, 1985, by Resolution No. 85-437, dated June 5, 1985, by Resolution No. 85-770, dated August 28, 1985, by Resolution No. 85-1142, dated December 9, 1985, by Resolution No. 86-213, dated March 6, 1986, by Resolution No. 86-582, dated June 10, 1986, by Resolution No. 86-941, dated September 2, 1986, by Resolution No. 86-1253, dated December 15, 1986, and by Resolution No. 87-281, dated March 16, 1987, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, and as of December 31, 1986, for the ninth; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85-142, dated February 22, 1985, Resolution No. 85-437, dated June 5, 1985, Resolution No. 85-770, dated August 28, 1985, Resolution No. 85-1142, dated December 9, 1985, Resolution No. 86-213, dated March 6, 1986, Resolution No. 86-582, dated June 10, 1986, Resolution No. 86-941, dated September 2, 1986, Resolution No. 86-1253, dated December 15, 1986, and Resolution No. 87-281, dated March 16, 1987, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through 1986 and the first quarter of 1987; and

Resolved further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85-142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85-142, No. 85-437, No. 85-770, No. 85-1142, No. 86-213, No. 86-582, No. 86-941, No. 86-1253 and No. 87-281 in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) of the NHA, by order of the Corporation;

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the second quarter of 1987, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of March 31, 1987; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about June 30, 1987; and

Resolved further, That the Director or Deputy Director, Office of the FSLIC ("Director"), shall determine the amount of the additional premium due to be paid on January 30, 1987, by each insured institution and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, That the Secretary shall forward this Resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-13042 Filed 6-8-87; 8:45 am]

BILLING CODE 6720-01-M

Liberty Federal Savings & Loan Association, Leesville, LA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Liberty Federal Savings & Loan Association, Leesville, Louisiana, on April 24, 1987.

Dated: June 3, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-13043 Filed 6-8-87; 8:45 am]

BILLING CODE 6720-01-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, DC 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, DC 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.: 217–011118.

Title: Mediterranean Shipping Co. S.A./American Transport Line, Inc. Space Charter Agreement.

Parties:

American Transport Line, Inc.
Mediterranean Shipping Co. S.A.

Synopsis: The proposed agreement would permit the parties to charter space on one another's vessels operating in the trade between United States ports and ports in Europe, to interchange containers and related equipment in the trade and to rationalize sailings and vessel schedules in the trade. The parties have requested a shortened review period.

Dated: June 4, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–13095 Filed 6–8–87; 8: 45 am]

BILLING CODE 6730-01-M

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, DC 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, DC 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.: 224–010744–001.

Title: Oakland Terminal Agreement.

Parties:

Port of Oakland (Oakland)
Mitsui O.S.K. Lines, Ltd. (Mitsui).

Synopsis: The proposed agreement would permit Agreement 224–010744–001 to provide that Mitsui's right to transfer the Agreement to other of Oakland's public Container Terminals may be exercised on 30 days' prior written notice or such shorter notice as is acceptable to Oakland.

Dated: June 4, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–13096 Filed 6–8–87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Somerset Bankshares, 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 inspection 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 July 1, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Somerset Bankshares, Inc.,* Somerville, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Somerset Savings Bank, Somerville, Massachusetts, which engages in Massachusetts Savings Bank Life Insurance activities.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.,* Falls Church, West Virginia; to merge with United Bancorp of Maryland, Inc., Upper Marlboro, Maryland, and thereby indirectly acquire United Bank & Trust Company, Inc., Upper Marlboro, Maryland. Comments on this application must be received by June 29, 1987.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank of Jackson Employee Profit Sharing and Money Purchase Pension Plan,* Jackson, Louisiana; to retain 25.74 percent of the voting shares of BOJ Bancshares, Inc., Jackson, Louisiana, and thereby indirectly acquire Bank of Jackson, Jackson, Louisiana. Comments on this application must be received by June 29, 1987.

2. *Hardwick Holding Company,* Dalton, Georgia; to acquire 88 percent of the voting shares of The Calhoun First National Bank, Calhoun, Georgia. Comments on this application must be received by June 29, 1987.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Forsyth Bancshares, Inc.,* Forsyth, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Forsyth, Forsyth, Montana.

E. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *W.T.B. Financial Corporation,* Spokane, Washington; to acquire 16.7 percent of the voting shares of Norban Financial Group, Inc., Coeur d'Alene, Idaho, and thereby indirectly acquire Northern State Bank, Coeur d'Alene, Idaho, and Seaport Citizens Bank, Lewiston, Idaho.

Board of Governors of the Federal Reserve System, June 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-13029 Filed 6-8-87; 8:45 am]

BILLING CODE 6210-01-M

U.S.B. Holding Co., Inc., et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *U.S.B. Holding Co., Inc.*, Nanuet, New York; to engage *de novo* through its subsidiary, Automation Consultants, Inc., Nanuet, New York, in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operation personnel), data bases or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by June 22, 1987.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Capital One Corp.*, Brown Deer, Wisconsin; to engage de novo through its subsidiary, Cap Funds, Inc., Brown Deer, Wisconsin, in loans or other extensions of credit such as made by banking, commercial, finance, mortgage and consumer finance companies pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Delta Bancshares, Inc.*, Kaufman, Texas; to engage *de novo* in making, acquiring, and/or servicing loans for itself or for others of the type made by a mortgage company, consumer finance company, or commercial finance company, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-13030 Filed 6-8-87; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council; Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 25, and Friday, June 26. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The June 25 session is expected to begin at 9:00 a.m. and to continue until 5:00 p.m., with a lunch break from 1:00 to 2:00 p.m. The June 26 session is expected to begin at 9:00 a.m. and to continue until 1:00 p.m. The Martin Building is on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. Home Equity Lines of Credit: Briefing by Board staff on the results of Board-sponsored consumer surveys regarding home-equity borrowing and a discussion led by the Council's Home Equity Subcommittee.

2. Enforcement of Agreements and Commitments under the CRA: Discussion of the role of the Federal Reserve in enforcing commitments and agreements that are made under the Community Reinvestment Act (CRA) by bank holding companies or state member banks.

3. Mandatory Check-Cashing for Government Checks: Discussion of a legislative proposal to require financial institutions to cash government checks for nondepositors free of charge upon presentation of an identification card to be issued at nominal cost to persons who register with the institution.

4. Delayed Availability of Funds (contingent upon legislative action): Briefing by Board staff on legislation in connection with institutions delayed availability practices.

5. Council Committee Status Reports:

Depository and Payments Systems Committee

Truth-in-Savings—discussion of legislative initiatives

Basic Banking—preliminary discussion of specific services that best meet the needs of low-income, elderly and minority consumers.

Consumer Credit Committee

Credit Card Disclosure—discussion of legislative proposals that mandate additional disclosure of terms and conditions for credit card plans.

Consumer Education Committee—assessment of shoppers guides and other educational material available to the public.

Financial Structure Committee—summary of a study released by Consumer Federation of America on allowing banks to sell insurance.

Community Affairs Committee—discussion of a proposed survey of system examiners to determine how banks various CRA activities are evaluated and an update on the Council's recommendation that the Reserve Banks host CRA forums for state-member banks.

6. Regulatory Update—Report by Board staff on the status of recent Board actions in the area of consumer financial services. Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ms. Ann Marie Bray, Secretary, Consumer Advisory

Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, June 19, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Ms. Bedelia Calhoun, Staff Specialist, at (202) 452–3305; for Telecommunications Device for Deaf (TDD) users only, contact Earnestine Hill or Dorothea Thompson at (202) 452–3544; Board of Governors of the Federal Reserve System, Washington, DC 20551.

Board of Governors of the Federal Reserve System, June 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–13028 Filed 6–8–87; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

[Wildlife Order 163; 1–GR–NJ–540]

Cohansey Light Station, Cumberland County, NJ; Conveyance of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration dated April 23, 1987, the property, consisting of two noncontiguous tracts of land containing 13.95 acres, known as Portion, Cohansey Light Station, Cumberland County, New Jersey, was transferred to the State of New Jersey, Department of Environmental Protection.

2. The above described property was conveyed for the purpose of wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80–537 (16 U.S.C. 667b), as amended by Pub. L. 92–432.

Dated: May 27, 1987.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 87–13027 Filed 6–8–87; 8:45 am]

BILLING CODE 6820–96–M

Agency Information Collection Activities Under OMB Review

GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring report 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds.

AGENCY: Office of Administration, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Sheila M. Dutton, (202) 566–1563.

Purpose: Members of the public fill out a form to request to use space in a Federal building for cultural or educational purposes.

Annual Reporting Burden: Requests, 8,000; burden hours, 666.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566–0668.

Dated: June 1, 1987.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 87–13025 Filed 6–8–87; 8:45 am]

BILLING CODE 6820–23–M

Agency Information Collection Activities Under OMB Review

The Office of Management and Budget (OMB) is being asked by GSA to reinstate an expired information collection, GSAR, Part 509, Certification (Crime, Debarments, Suspensions, Defaults).

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Under the Paperwork Reduction Act of 1980, GSA asks the OMB to reinstate an expired information collection (3090–0214).

ADDRESSES: Send Comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Office of Acquisition Policy, GSA (202) 523–7791.

Purpose: GSA collects this information to certify that contractors seeking contracts valued at more than $25,000 have not be indicted, convicted, suspended, debarred, or have not had a contract terminated by default.

Annual Reporting Burden: Firms responding, 90,945; annual responses, 90,945; burden hours, 15,158.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566–0668.

Dated: May 29, 1987.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 87–13026 Filed 6–8–87; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings for June and July

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the Small Business Innovation Research Review Committee in the months of June and July, 1987. This committee will be open for discussion of administrative announcements and program developments. The committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b) (6) and 5 U.S.C. app. 2 10(d). Notice of the meeting is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: Small Business Innovation Research Review Committee, NIMH

Date and Time: June 30–July 1: 9:00 a.m.

Place: The Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW. Washington, DC 20007

Status of Meeting: Open—June 30: 9:00–10:00 A.M., Closed—Otherwise

Contact: Bonnie Dwyer, Room 9C–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute of Mental Health (NIMH) for support of research from small business that focus on mental health topics within the mission of NIMH, with

recommendations to the National Advisory Mental Health Council for final review.

Substantive information may be obtained from the contact person mentioned above. A summary of the meeting and roster of committee members may be obtained from Ms. Joanna Kieffer, Committee Management Officer, NIMH, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: June 2, 1987.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 87–13068 Filed 6–8–87; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 84D–0292]

Sterile Drug Products by Aseptic Processing; Current Good Manufacturing Practice Final Guideline; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guideline entitled "Guideline on Sterile Drug Products Produced by Aseptic Processing." The guideline outlines certain aseptic processing practices and procedures which the agency views as acceptable for the preparation of sterile drug products for human and animal use. The guideline is intended to inform interested persons of these acceptable processes to facilitate compliance with the current good manufacturing practice (CGMP) regulations and to help assure the quality of human and animal drug products.

ADDRESS: Written comments and requests for a copy of the final guideline may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist the Branch in processing your request.

FOR FURTHER INFORMATION CONTACT: Paul J. Motise, Center for Drugs and biologics (HFN–323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8089.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 1, 1985 (50 FR 4799), FDA issued a notice announcing the availability of a draft guideline entitled "Guideline on Sterile Drug Products Produced by Aseptic Processing" (January 1985). The draft guideline was intended to inform interested persons of certain aseptic processing practices and procedures for the preparation of sterile drug products that FDA believes constitute acceptable ways of complying with applicable CGMP regulations. The draft guideline was made available for public comment to provide the agency with views to be considered in its development of a final guideline. Interested persons were given until May 2, 1985, to comment on the draft guideline.

Thirty-nine comments were received in response to the notice. The comments came from domestic and foreign manufacturers, industry trade associations, the United States Pharmacopeial Convention, drug equipment manufacturers, health care departments of universities, drug industry consultants, and a foreign health care organization. The draft guideline has been revised as a result of these comments. A copy of the comments are on file with the Dockets Management Branch (address above) under Docket No. 84D–0292.

This notice and the final guideline are issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. The agency advises that this final guideline complies with the requirements of the CGMP regulations, and it may be relied upon by manufacturers of sterile drug products produced by aseptic processing to meet those regulations. A person may also choose to use alternate procedures even though they are not provided for in the guideline. If a person chooses to depart from the practices and procedures set forth in the final guideline, that person may discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable by FDA.

Interested persons may submit written comments on the final guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining the future need for amending the final guideline. Two copies of comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The final guideline and received comments may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the final guideline should be sent to the Dockets Management Branch.

Dated: June 1, 1987.

George R. White,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–12970 Filed 6–8–87; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is given that Chapter S1M, as published in the **Federal Register** on August 7, 1979, as amended on December 17, 1980, October 16, 1981, Novemeber 20, 1981, August 15, 1983, October 17, 1984 and February 7, 1986, is being amended to reflect the elimination of the Evaluation and Field Liaison Staff (S1MHD) within the Office of Human Resources (S1MH). This change consolidates functions in the Office of Human Resources by distributing those assigned to the Evaluation and Field Liaison Staff among the Division of Personnel Policy, Data and Research (S1MHC) and the Division of Classification and Organization Management (S1MHQ). The revisions are as follows:

Chapter S1M—Office of Management, Budget, and Personnel

S1M. Mission
S1M.10 Organization
S1M.20 Functions

Section S1M.10 *The Office of Management, Budget, and Personnel—Organization):*

Delete: F.3 The Evaluation and Field Liaison Staff (S1MHD).

Section S1M.20 *The Office of Management, Budget and Personnel—(Functions):*

Delete: F.3 The Evaluation and Field Liaison Staff (S1MHD).

Add: F.1.f. Directs an SSA-wide program for inspection and evaluation of SSA's personnel mangement program including employment and staffing, position management and classification, employee relations, equal employment opportunity and labor relations. Conducts special studies to provide managers with information and to assure conformance with OPM regulations and HHS/SSA policies and directives.

Dated: May 21, 1987.

Nelson J. Sabatini,

Deputy Commissioner for Management and Assessment.

[FR Doc. 87–13037 Filed 6–8–87; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1668; FR-2299]

Transitional Housing Demonstration Program; Notice of Final Guidelines

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Final Guidelines.

SUMMARY: This notice announces HUD's final guidelines for the operation of the Transitional Housing Demonstration Program contained in HUD's appropriation for fiscal year 1987. The Program is designed to develop innovative approaches to providing housing and supportive services to help facilitate the transition to independent living for homeless persons who are capable of making the transition within a reasonable period of time. Under the guidelines, HUD will make assistance available to eligible governmental and private nonprofit entities in the forms of: (1) Interest-free advances to cover part of the costs of acquiring or rehabilitating (or both) existing structures for use in the provision of housing and supportive services for homeless persons; (2) funding of a portion of the operating costs of the housing; and (3) technical assistance to recipients in carrying out activities under the Program.

EFFECTIVE DATE: June 9, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5720. (This is not a toll-free number.)

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I. Background

Title V of HUD's appropriation for fiscal year 1987 [1] established the Homeless Housing Act of 1986 (the Act). The Act created two new programs to assist homeless persons. Part B of Title V contains the Transitional Housing Demonstration Program. Part C contains the Emergency Shelter Grants Program. This notice addresses the Transitional Housing Demonstration Program. (A proposed rule implmenting the Emergency Shelter Grants Program was published in the **Federal Register** on December 17, 1986 (51 FR 45277).

Under the Transitional Housing Demonstration Program, HUD is directed to carry out a program to develop innovative approaches for providing housing and supportive services to help facilitate the transition to independent living for homeless persons who are capable of making the transition within a reasonable time. The purposes of the Program are to determine:

—The cost of acquiring or rehabilitating (or both) or leasing, existing structures for the provision of housing for homeless persons;

—The cost of operating the housing and providing supportive services to its residents; and

—The social, financial, and other advantages of the housing and supportive services as a means of assisting homeless persons.

[1] Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

II. Procedural Implementation Requirements

Section 514 of the Act contains procedural requirements governing the implementation of the Program. Section 514(a) directs the Secretary to issue, within 180 days of the Act's enactment, guidelines necessary to carry out the demonstration. Before issuing these guidelines, section 514(b) directs the Secretary to consult with persons and entities having expertise on the problems and needs of homeless persons or experience in providing housing or supportive services for them. Finally, under section 514(c), all guidelines must be published in the **Federal Register** annually and whenever modified, and their development is made subject to the procedural rulemaking requirements of the Administrative Procedure Act. (5 U.S.C. 551–553.)

In conformance with the advance consultation requirements of section 514(b) and the publication requirements of section 514(c), HUD program officials met with homeless care providers and other groups and individuals with expertise regarding homeless issues during December 1986, and the Department published guidelines and a request for public comment in the **Federal Register** on February 25, 1987 (52 FR 5587).

III. Discussion of Public Comments

In response to the request for public comment, HUD received 42 comments within the comment deadline. Twelve additional comments were filed beyond the deadline. The 54 commenters included 26 nonprofit organizations (including five churches or religious groups), 24 governmental entities, two individuals, one national association, and one coalition of nonprofit organizations and local governments. Of these commenters, five supported the proposed guidelines; 20 supported the proposed guidelines, but recommended changes; 25 expressed neither support nor opposition to the proposed guidelines, but recommended changes; and four opposed the guidelines unless their proposed recommendations were incorporated in the final guidelines.

A. Statutory Limitations

In many instances, commenters suggested revisions that cannot be incorporated into the final guidelines because they conflict with the statutory provisions governing the Program. These statutorily impermissible suggested changes include:

1. The deletion of the $200,000 limitation on the amount of an acquisition/rehabilitation advance (section 512(a)(1) imposes this limit);

2. The addition of provisions permitting HUD to provide assistance in addition to the three types of assistance permitted under the statute, e.g., emergency seed money (section 512(a) is an exclusive listing of the types of assistance available under the Program);

3. The provision of assistance for newly constructed rather than existing structures (section 512(a) permits assistance only for "existing structures");

4. The reduction, elimination, or waiver of the requirement that the recipient use each structure for which assistance is provided for transitional housing for five years following initial occupancy (section 513(c)(4) imposes this requirement and does not provide for its reduction or waiver);

5. The modification of this five-year use requirement to make it applicable to a specified number of units or beds rather than a specific structure (section 513(c)(4) imposes the requirement of the "structure");

6. The reduction, elimination, or waiver of the 10-year requirement for use of a structure as housing for homeless persons (or for another charitable use approved by the Secretary) to avoid repayment of the acquisition/rehabilitation advance (section 512(b) imposes the 10-year requirement and does not provide for its waiver or reduction);

7. A modification of the guidelines to permit HUD to require the repayment of less than the full amount of the acquisition/rehabilitation advance, if the 10-year use requirement is not met (section 512(b) gives HUD no discretion to require repayment of less than the full amount);

8. The revision of the guidelines to permit each recipient, rather than HUD, to establish the maximum permissible stay of individual residents, or to make the established limitation merely a guideline or a limitation on the *average* length of stay for residents (section 513(c)(1) states that HUD will set the maximum permissible stay of individual residents);

9. The elimination of the requirement that each recipient must agree to employ a full-time residential supervisor (section 513(c)(3) imposes the requirment); and

10. The elimination of the requirement that each resident must pay as rent an amount determined in compliance with the provisions of section 3(a) of the United States Housing Act of 1937 (the

1937 Act) (sectin 513(d) imposes this requirement).

B. Definitions

The final guidelines containing the definitions for the Program are found in paragraph IV.A., below.

The proposed guidelines defined "applicant" as any governmental or private nonprofit entity that submits an application for assistance under the Program. "Governmental entities" were defined to include those that have general governmental powers (such as a city or county) and those with limited or special purpose powers (such as public housing agencies (PHAs)).

HUD received comments urging revision of this definition to exclude: (1) PHAs, (2) all governmental entities, or (3) all private nonprofit entities. Exclusion of PHAs was justified by the commenter on grounds that they are generally not involved in the creation of new housing units and generally do not serve the needs of the homeless. Exclusion of private nonprofit entities was based on the assertion that units of local government are more proficient at coordinating program participants, and that competition between public and private entities would complicate the application review process and diminish the ability of the Program to produce replicable models. Exclusion of all governmental entities was premised on one commenter's desire to provide more opportunities to private nonprofit organizations that have experience and expertise in shelter programs.

The final guidelines do not respond to these suggestions. First, it is highly doubtful, as a statutory matter, whether HUD has discretion categorically to exclude any governmental or nonprofit entity, much less either of these classes entirely. Section 502(9) of the statute defines "recipient" to include "*any* governmental or private nonprofit entity approved by the Secretary as to financial responsibility." (emphasis added)

Second, the Department believes that the demonstration nature of the Program argues strongly in favor of soliciting applications from the widest range of applicants permitted by statute. Different aplicants and types of applicants may well have different strengths and approaches that will contribute to the demonstration's purpose of assessing the transitional housing approach—from both financial and social perspectives—as a means of assisting the homeless in the future. Categorically excluding certain applicants would deprive the Program of this diversity, and could frustrate the demonstration's pruposes. Consistent with this determination, and in response to another commenter, the Department has clarified the guidelines' description of governmental entity to include State governments.

Several commenters urged revisions to the definition of "applicant" to clarify that the recipient under the Program need not be the same entity that owns or manages the facility. Commenters claimed that this change is necessary to permit HUD to fund governmental entities that would fund or contract with others to implement the Program.

The final guidelines do not contain the proposed clarification. Unlike the Emergency Shelter Grants Program, which permits governmental grantees to pass through assistance to other governmental or private nonprofit entities, this demonstration contemplates direct participation by the grant recipient. Thus, section 513(b)(1) stresses the "ability of the *applicant* to develop and operate housing for homeless persons and to provide or coordinate supportive services for the residents . . .". (emphasis added) The definition of "recipient" has been revised to clarify this point.

The Department wishes to make clear, however, that this requirement does not preclude joint applications, where (for example) one organization will provide housing and another will provide or coordinate the provision of supportive services. The definition of "applicant" has been modified to permit such applications.

Under the proposed guidelines, "homeless person" was defined as an individual or family which does not have access to either traditional or permanent housing, but which is capable of living independently within a reasonable amount of time, not to exceed 18 months.

For the purposes of clarity in the final guidelines, HUD has inlcuded, in the definition of homeless person, provisions describing the homeless populations that may be served under this Program. The definition provides that these populations include (but are not limited to): Victims of domestic violence, families with children, the unemployed, the chronically mentally ill, runaway children, or an appropriate combination of these populations.

Several commenters suggested definition of the requirement that a homeless person must be capable of independent living. In some cases, commenters suggested rigorous requirements for determining whether an individual or family is capable of independent living. For example, one commenter suggested that, at least for certain types of homeless persons, only individuals with the potential to acquire marketable skills and the motivation necessary to find jobs to support themselves upon graduation from transitional housing woud be capable of independent living. Other commenters recommended a less restrictive interpretation of this requirement. For example to ensure that the guidelines do not discriminate against individuals with disabling physical or mental handicaps, some commenters recommended that the definition include those persons capable of living independently *with appropriate supervision*. Another commenter suggested that HUD permit the recipient to determine the capacity for independent living.

The definition of "homeless person" has been revised to clarify what will constitute "independent living." This Program is not intended to warehouse individuals for a time, only to send them to an institution or return them to their previous state of homelessness upon their departure from transitional housing. Rather, it is intended as an interim placement, where individuals will receive the assistance necessary to move into permanent housing and to maintain their continued residence in that housing with appropriate assistance from resources available in the community. Accordingly, the final guidelines provide that a person is capable of independent living if, at the time the person is reviewed for admission to transitional housing, the recipient determines that: (1) The resources reasonably expected to be abailable in the community followig the person's anticipated departure from transitional housing will be adequate to meet his or her housing needs and requirements for continued services, and (2) the person will understand the importance, and will be capable, of using these resources following his or her anticipated departure from transitional housing.

The definition of "homeless person" requires that such persons must be capable of making the transition to independent living within 18 months. Several commenters objected to this 18-month time period, because they believed (1) that it was inadequate, particularly in areas where low-income housing is in short supply, to facilitate the transition of certain homeless populations (e.g., families with children, individuals with disabling physical or mental handicaps, and individuals enrolled in job-training programs), (2) that it was not sufficiently long to benefit those in greatest need, and (3) that it could have the unintended effect

of discriminating against individuals with physical or mental disabilities. Commenters recommended that the length-of-stay limitation be two or more years, and that the guidelines exempt homeless individuals with mental or physical handicaps from any stay limit or provide for its waiver in certain circumstances.

In the proposed guidelines, HUD chose 18 months as the maximum stay limitation based upon consultations with homeless care providers. We continue to believe that this time period is sufficient to ensure a successful transition to independent living for the individuals intended to be served by the Program. In this regard, the Department is mindful of the admonition in the Senate report on the provisions that ultimately became the substance of the Program:

> The term "homeless person" is limited to those capable of living independently within a reasonable amount of time. The Committee believes that this demonstration program should focus on homeless individuals who are capable of moving back into traditional housing within a reasonable period to time. The demonstration program should not be considered an attempt to place homeless Americans in new institutions.
>
> S. Rep. No. 314, 99th Cong., 2d Sess. 14 (1986)

We believe that the 18-month limitation strikes the appropriate balance between: (1) Ensuring that there is adequate time for many of the homeless to achieve independent living and (2) simply establishing another long-term care facility.

The definition of "homeless person" in the final guidelines has been revised to include "a *homeless* individual or family which does not have access to traditional or permanent housing . . .". One commenter urged HUD to clarify that an individual or family without access to traditional or permanent housing would include individuals or families that live in substandard or overcrowded housing, that pay an excessive amount of income for rent, that live doubled up, or that face eviction. Although the individuals or families described by the commenter may be in need of better housing or may soon be without any housing, the Department believes that the Program should focus on those with the greatest present housing need—those with no housing at all. Accordingly, HUD will not consider any of these individuals to be without access to traditional or permanent housing.

"Rehabilitation" and "operating costs" were defined with some specificity in the proposed guidelines. One commenter argued that "rehabilitation" should be revised to include the following costs: Architect and engineering fees; builder's risk insurance; demolition expenses; fire protection costs; the costs of furnishing the stucture; financing fees; permit fees; closing costs; carrying costs during rehabilitation; approval expenses; and site work. Other commenters urged HUD specifically to include as rehabilitation, costs of installing safety devices (smoke detectors, alarms, sprinklers, etc.), costs of removal of architectural barriers, and cost of renovation of an existing structure whose former use was nonresidential.

The suggested changes have not been made. The definition in the proposed guidelines is adequate to cover all the costs and expenses cited by the commenters, with the exception of the cost of furnishings. These costs are not rehabilitation costs. Rather, they are specifically cited by the statute as operating costs. (See section 502(10)(B) and our definition of "operating costs" at paragraph IV.A., below.) In addition, the definition states that rehabilitation includes "alterations or additions to, or enhancement of, existing structures." This is sufficiently broad to cover the installation of safety devices, removal of architectural barriers, and rehabilitation work designed to convert a nonresidential structure to transitional housing.

One commenter argued that "operating costs" should include the cost of extensive repairs made to correct major defects in rehabilitation work. While the operating costs definition permits minor or routine repairs, it was not intended to permit recipients to shift rehabilitation expenses from the acquisition/rehabilitation advance (which may be subject to repayment by the recipient) to operating costs (which is not subject to repayment). In addition, to the extent the commenter is referring to the correction of defects in rehabilitation performed with Program funds, the commenter should look to those responsible for the defects for satisfaction: Rehabilitation costs cannot be paid from operating assistance under the Program. The proposed change has not been incorporated in the final guidelines.

Finally, one commenter urged HUD to provide funding assistance under the Program to cover grant administration expenses and the "costs of meeting assurances." HUD will permit payment of grant administration expenses from operating cost assistance if the expenses are incurred in the operation of transitional housing, and under the acquisition/rehabilitation advance if they are related to rehabilitation or acquisition. While the commenter does not explain what is meant by "costs of meeting assurances," to the extent the commenter is seeking repayment of the costs of demonstrating in its application that it has met all program requirements for funding, such pre-grant costs are not within the purview of costs that may be paid under section 512(a) (1) or (2), and will not be included in the calculation of either the advance or operating costs.

In conformity with the discussion at paragraph C.1.(i)(b)(7) of this section, below, the definition of "operating costs" has been revised to exclude debt service incurred in connection with the acquisition or rehabilitation of the transitional housing facility.

The proposed guidelines generally followed the statutory approach in defining "supportive services." These guidelines contained a specific listing of services, followed by a general statement of eligibility for "other services proposed by the applicant in its application and approved by HUD, that are essential for maintaining independent living and that address the needs of the homeless persons served by the recipient." Several commenters suggested revisions to the definition to include specifically such activities as ongoing case management, 24-hour crisis assistance, vocational and psychosocial rehabilitation services, financial counseling, and drug and alcohol counseling.

The final guidelines retain the proposed definition. While commenters urged HUD to include as many examples of supportive services as possible, we believe that a lengthy listing of services is neither useful nor desirable. As indicated by the definition, the propriety of "other services" will turn on the type of transitional housing to be provided. Listing services in the guidelines, without benefit of the specific factual context in which the services are to be furnished, would be at least uninformative and at worst misleading and confusing. The Department believes that the approach taken in the guidelines is preferable—applicants should determine the services that *they* believe are needed, and HUD will consider the propriety of the services in the context of the application.

"Housing for homeless persons" was defined, in part as a structure that is suitable for the provision of housing and supportive services for homeless persons in an appropriate group setting. Two commenters requested further clarification of the phrase "in an appropriate group setting." Commenters asked if this definition permits single

room occupany arrangements, and if recipients may provide single family units to individual homeless families under this definition.

Both housing arrangements are permissible. The "appropriateness" of the group setting, of course, will depend on the homeless individuals and families to be served and the supportive services to be provided to them. HUD will consider this factor in the selection process when it considers the adequacy of the proposed housing. (See paragraph IV.D.2.(iv)(c), below.)

As a related matter, several commenters asked whether HUD will permit the use of only one structure, or whether housing can be provided at scattered sites. HUD believes that the statute does not prohibit scattered site projects, and that the propriety of the use of scattered sites will turn on the transitional housing proposed in the application. To clarify this point, the definition of "housing for homeless persons" has been revised, and a definition for "project" has been added. Thus, "housing for homeless persons" is defined as:

> One or more existing structures or parts of one or more existing structures that are suitable for the provision of housing and supportive services for homeless persons in an appropriate group setting . . .

As noted earlier, assistance under the Program may only be used for *existing* structures. One commenter asked whether manufactured housing is permitted under the Program. The use of manufactured housing is not precluded, as long as the housing is an existing structure rather than a newly constructed structure. For example, assistance will not be provided to a recipient to acquire manufactured housing from a dealer, as first owner, or to purchase such housing directly from the manufacturer.

The definition of "private nonprofit entity" provided, in part, that the entity must have a voluntary board. In response to a commenter's inquiry, we note that this requirement does not preclude a board member from receiving compensation for services that are not related to his or her responsibilities as a member of the board. Such activities, however, may be forbidden under the conflict of interest provisions contained in paragraph IV.E.6.(v), below.

C. Assistance Under the Program

1. Types of Assistance Available

HUD offers three types of assistance under the Program. Two involve funding assistance to recipients—the acquisition/rehabilitation advance and the annual operating costs. The third involves the provisions of technical assistance to recipient of funding assistance.

(i) *Funding assistance*—(a) *Matching requirement.* As noted above, HUD will provide funding assistance in the form of acquisition/rehabilitation advances and annual operating costs. In addition to the statutory $200,000 limitation on the amount of the advance discussed in paragraph A. of this section, above, HUD proposed to require each recipient of an advance to provide a minimum of 50 percent of the aggregate cost of the acquisition/rehabilitation, and each recipient of annual operating costs to pay a minimum of 50 percent of the annual operating costs. Several commenters objected to this matching requirement.

Some commenters argued that the requirement is contrary to statutory provisions. For example, one commenter argued that the recipient's contribution for operating costs should be limited to 25 percent of such costs, as envisioned by section 512(a)(2). One commenter argued that the requirement is contrary to the congressional intent that HUD provide the maximum amount allowable under the statute.

Section 512(a)(1) provides that the amount of the advance is *not to exceed* $200,000 or the aggregate cost of acquisition/rehabilitation, whichever is less. Similarly, section 512(a)(2) provides that the payment for annual operating costs is *not to exceed* 75 percent of the annual operating costs of the housing. Contrary to the assertions of the commenters, customary rules of legislative interpretation indicate that these amounts represent the *maximum* that HUD may provide, rather than a requirement that HUD provide funding up to the full amount stated. Moreover, HUD has found no expression of congressional intent to support the contention that HUD does not, or should not, have discretion to set the maximum amounts of Federal assistance within the outer limits specified in the statute.

In addition to these arguments, commenters alleged that the leveraging requirement will be financially burdensome to many applicants, including established providers of transitional housing, and could cause serious financial problems during the initial stages of operation. Others noted that the requirements are not necessary to ensure the recipient's commitment to the Program or the effective use of limited funds, in light of the number of years that applicants will be required to agree to operate transitional housing in order to obtain funding. Some commenters predicted that this requirement would result in very few applications under the Program.

As the proposed guidelines stated, the "leveraging" requirement is intended:

> To ensure recipients' commitment to the provision of transitional housing and to ensure that the most effective use is made of the limited funds available for this demonstration . . . (52 FR 5592)

The Department has reviewed this reasoning in light of the public comments, and has concluded that it provides an overriding basis for continuing the proposed "leveraging" requirement. The statute directs HUD to conduct a demonstration to determine the costs and advantages of providing transitional housing for homeless persons. we believe that requiring recipients to secure at least one-half of their financial support from other sources is the most effective way of ensuring recipient commitment to a well-conceived and well-operated program that will yield the most useful demonstration results.

With regard to the specific comments on this point, the Department agrees that the statutory five-year program operation requirement supports the goals of the "leveraging" requirement, discussed above. We believe, however, that a dedication of finances, as well as a dedication of time, is necessary to provide adequate assurance of recipients' commitment to the provision of transitional housing. In addition, while this requirement may preclude some potential applicants from submitting applications under the demonstration, we do not believe that this requirement will unduly restrict the number of applications submitted. During our advance consultation with homeless care providers and throughout the public comment period, HUD has received numerous inquires from private nonprofit and governmental entities wishing to participate in the Program. These entities should provide a sufficient pool of applicants to carry out the demonstration.

(b) *Computation of the matching contribution.* The proposed guidelines described HUD's requirements for documentation of sources of matching funds, for the commitment of "new" funds, for exclusion from the matching computation of "in-kind" contributions, and for the consideration of rental income as part of the applicant's match. Additionally, the guidelines indicated that HUD may prohibit the use of funds provided through other federally assisted programs as part of an applicant's matching contribution.

(1) *Assistance categories.* The proposed guidelines required that applicants meet the 50 percent matching requirement for each type of assistance. Thus, the most that HUD would make available for the acquisition/rehabilitation advance or annual operating costs would be 50 percent of their respective costs. One commenter objected to this requirement.

The purpose of the requirement for the separate match for each catetory of assistance is to ensure that the most effective use is made of the limited funds available under the Program by encouraging as much State and local, public and private leveraging as possible, and to provide that the recipient will have a financial stake in both the initiation of operations for the project and the continuation of operations under the Program. While this provision forbids the use of operating cost commitments to leverage the acquisition/rehabilitation advance and *vice versa*, we note that applicant leveraging in excess of 50 percent is one of the five ranking criteria under paragraph IV.D.3. Under these criteria, an applicant that provides leveraging in excess of 50 percent will be awarded a greater number of points in the ranking stage of the selection process. The requirement for separate matches will be retained in the final guidelines.

(2) *Existing programs.* HUD proposed to exclude from the leveraging calculation the applicant's expenditures necessary to maintain and operate an existing program serving homeless persons at its current level. The proposed guidelines used the following example to explain this concept:

> An applicant submits a request for . . . operating costs. It currently operates transitional housing that has a capacity to serve 10 homeless persons and has annual operating costs of $100,000. If the applicant proposes no increase in the level of supportive services provided or the number of homeless persons served, it would not be eligible for operating cost funding under the Program . . . If, however, the applicant proposes to provide *additional* supportive services for the 10 homeless persons and these services will increase annual operating costs to $150,000, $25,000 (the $50,000 increase in operating costs times the 50 percent leveraging requirement) would be elgible for funding. The applicant would be required to demonstrate that it could provide its leveraging ($25,000) from resources in addition to those already committed to its existing program. (52 FR 5592–93)

One commenter suggested the deletion of this requirement. The commenter argued that as long as the facility adds new units to serve homeless persons in transitional housing, it should be able to marshal any available funds as leverage. The commenter's proposed change has not been made because it would give undue preference under the leverage ranking criterion to existing providers of housing or supportive services. Thus, in the example above, without the new funds requirement and without any commitment to provide funds in excess of its current $100,000 operating cost commitment, the applicant would be credited with a 66 percent match. For clarity, the final guidelines have been revised to indicate that the "new funds" requirements apply only to existing providers of housing or supportive services.

(3) *"In-kind" contributions.* HUD proposed excluding the value of all "in-kind" contributions from the leveraging calculation, except for donations of structures. Numerous commenters urged the inclusion of all "in-kind" contributions in the leveraging computation. Commenters argued that their exclusion will unduly disadvantage applicants that are reliant on such contributions in their operations, and is inconsistent with the innovative and demonstration aspects of the Program and the administration of other grant programs.

HUD continues to believe that the match required the Program should generally be a "hard match"—*i.e.*, the matching contributions should come from *funds* made available from the applicant or from other sources. The Department believes that a "hard match" is the best indicator of the likelihood of success of the project and, thus, the Program's demonstration mission.

In addition, "in-kind" contributions entail considerable valuation difficulties. If "in-kind" contributions were generally permitted, applicants would be required to assign a dollar value to each item. Since valuation tends to be an inaccurate science and since the Program's threshold and ranking criteria reward applicants with the highest percentage match, there would be pressure on applicants to inflate their "in-kind" contributions. Moreover, since HUD would not have the resources to look behind the value of each of the potentially infinite number of "in-kind" contributions submitted by applicants, it would be unlikely that we could detect anything other than grossly exaggerated valuations. As a result, we fear that underfunded projects would be selected for the Program. Underfunded programs would have a reduced possibility of success. Given the demonstration's small size, even one failed project could seriously undermine its objectives.

Many commenters specifically opposed HUD's exclusion of volunteer services. They argued that such services are relatively easy to value by the use of prescribed models. Others argued that HUD should establish a set rate per hour. Even if HUD could establish a viable rate per hour, it could not eliminate the problems associated with applicant's overoptimistic estimates of the number of volunteer hours to be donated. Accordingly, HUD will not provide an exception for volunteer services.

In the proposed guidelines, HUD stated that it would consider the value of donated structurers. One commenter argued the value of structures that were already owned by the applicant and that would be dedicated to use in transitional housing should also be considered. HUD did not intend to forbid the consideration of such buildings in the matching computation. The final guidelines have been revised to clarify this point.[2]

For purposes of clarity, HUD offers the following two examples to illustrate how the value of structures will be used in the leveraging computation:

Example 1

Fair market value of building	$200,000
Cost of rehabilitation	200,000
Total	400,000
Applicant's minimum matching requirement ($400,000 times 50 percent)	200,000

In this example, the applicant has met the 50 percent matching requirement for the acquisition/rehabilitation advance and will be eligible for an advance of up to $200,000.

Example 2

Fair market value of building	$200,000
Cost of rehabilitation	100,000
Total	300,000
Applicant's minimum matching requirement ($300,000 times 50 percent)	150,000

[2]The Department sees no inconsistency in continuing to count donations of structures toward an applicant's match while excluding all other types of "in-kind" contributions. Valuation of buildings, although not a perfect science, is sufficiently sophisticated that the appraised value of a structure should accurately reflect its fair market value. This is especially true when (as required by the guidelines) the appraisal is conducted by a qualified real estate appraiser. Moreover, since many applicants will not claim any donated buildings, and those that do will likely claim only one, HUD will be in a much better position to review the value asserted, should that be necessary or desirable.

In this second example, the applicant has exceeded its 50 percent matching requirement for the acquisition/rehabilitation advance. Under the ranking criteria for leveraging (see paragraph IV.D.3.(iv), below, the applicant would be credited with a 66 percent match for the acquisition/rehabilitation advance. If the applicant is ultimately selected for funding of the requested advance, the advance will be limited to $100,000. (Where currently owned or donated buildings are used to compute the applicant's leveraging contribution for the advance, the amount of HUD's advance will be limited to the amount to be expended by the applicant to rehabilitate the building and, as noted above, cannot exceed $200,000.)

(4) *Other federally assisted programs.* The proposed guidelines stated that HUD was considering the imposition of a requirement that each applicant demonstrate that it can fulfill its leveraging contribution with funds other than those provided through other federally assisted programs.

Numerous commenters objected to this proposed requirement, arguing that HUD should permit the use of funds provided through other Federal programs in the leveraging computation to the maximum extent possible. Some commenters suggested that HUD consider discouraging, but not prohibiting, the use of such funds by providing preferences in the ranking process. Other commenters suggested that HUD set maximum limits on the amount of funding that may be leveraged through other fedeally assisted programs.

HUD believes that permitting applicants to count funds obtained from other Federal sources as part of their matching requirement is an inappropriate use of the Program's leveraging concept. As noted earlier, we believe that the success of the demonstration depends upon ensuring the commitment of the applicant to develop and operate a successful program. Obtaining funds from State or local governments or from private sources generally indicates that the sources of funds has made a favorable judgment on the applicant and its program. In addition, the Department believes that this approach will ensure the active participation of State and local governments, and nonprofit organizations—as involvement that is essential to the success of any attempt to address the homelessness issue. Thus, to ensure that the leveraging requirement does not become a mere exercise in "grantsmanship" and to encourage local commitment to the problems of homeless persons without undue reliance on assistance from the Federal government, the final guidelines provide that applicants may not include funds provided through any other federally assisted program in the computation of the leveraging requirement.

We note that this prohibition does not extend to proceeds of tax-exempt bonds. Although the bonds are tax-exempt, the source of funds is non-Federal, and the underwriting decisions must meet private market criteria.

The final guidelines recognize one exception to the requirement that each applicant must demonstrate that it can fulfill its matching contribution with funds other than those provided through other federally assisted programs. Section 105(a)(9) of the Housing and Community Development Act of 1974 provides that activities assisted under HUD's Community Development Block Grant (CDBG) program may include "payment of the non-Federal share required in connection with a Federal Grant-in-aid program undertaken as part of activities assisted under this title." HUD believes that this statute prohibits the exclusion of CBDG funds from the applicant's leveraging computation under the Program. The final guidelines have been amended accordingly.

We note that it may be difficult, in some cases, to determine if the funds used in an applicant's match are from other federally assisted programs. For example, an applicant may receive a commitment from a State social service agency where it is impossible for the applicant to determine the source of the original funds. In such a case, HUD will not assume that the funding is from a federally assisted program and the commitment may be counted as part of the applicant's match.

Finally, the Department wishes to point out that the exclusion of "inkind" contributions and funds from other federally assisted programs from the Program's leveraging computations does not mean that these contributions and amounts may not be used in the Program. Indeed, the Department particularly encourages the use of volunteers as a way of broadening the base of awareness and involvement at the local level—conditions that the Department believes are necessary to addressing homelessness in a meaningful and effective fashion.

(5) *Rental income.* The proposed guidelines stated that the rental amounts paid by residents of transitional housing may be included in the leveraging calculation of the annual payment of operating costs.

Two commentes noted a potential conflict between this provision and the prohibition (discussed above) against counting Federal funds toward the leveraging requirement. They argued that an applicant that admits homeless families receiving SSI benefits may be prohibited from including rental income from these payments as a part of its match, since these benefits may be considered "Federal funds." Another commenter urged HUD to permit the consideration of rental income from these sources as part of the applicant's match, or to reduce the amount of the total operating costs that are subject to the leveraging requirement.

The Department wishes to make clear that rental income from amounts received by residents of transitional housing from Federal income-transfer programs may be counted as part of the recipient's matching requirements. Amounts received under programs such as SSI and AFDC provide additional disposable income for their beneficiaries, and may be spent as the beneficiaries choose. We believe that these amounts lose their identity as "funds under federally assisted programs" upon their receipt by the beneficiary. Thus, rental income stemming from these benefit programs may be counted toward a recipient's match.

Under the proposed guidelines, applicants were required to substantiate the rental amount to be included in the leveraging computation. Among other factors, the estimated rental amounts were to reflect the rental income calculation under section 3(a) of the 1937 Act. One commenter noted that HUD will provide technical assistance on the calculation of resident rent under section 3(a) of the 1937 Act *after* recipient selection. This commenter argued that applicants without experience with HUD's rent calculation procedures may be unable to make a correct estimate of rental amounts and that, therefore, HUD should provide *preapplication* assistance in these procedures.

HUD agrees that some applicants may experience difficulty in applying section 3(a)'s procedures. However, rather than provide preapplication training in this area, HUD has modified the final guidelines to permit applicants to estimate rental income to be derived under section 3(a) of the 1937 Act. For purposes of computing the applicant's match, the applicant may assume that the rental income received from residents will be equal to 10 percent of

the estimate of total resident income. The Department wishes to note that this alternate method of determining rental income does not change any of the final guidelines' requirements concerning the calculation of total resident income, such as adjustment for the length of time necessary for homeless persons to qualify for income support assistance, or to find employment.

(6) *Documentation.* The proposed guidelines required the applicant to provide appropriate documentation indicating the sources and amounts of the applicant's leveraging contribution. If the source of the contribution was an entity other than the applicant, the documentation had to be sufficient to demonstrate a commitment to provide funds if the applicant is selected for funding.

Commenters argued that the requirement for a firm commitment of outside sources of funding was unrealistic. HUD has reconsidered this requirement. In recognition of the fact that many entities' funding cycles will not permit the issuance of a firm commitment for five full years of operating costs, the final guidelines will permit applicants to fulfill this requirement with a letter of intent from the funding source. A letter of intent must demonstrate the source's reasonable expectation and resolve to provide a stated amount of operating funds at a stated date in the future. The factual basis for the source's reasonable expectation (e.g., past funding experience) must be stated in the letter. The letter of intent may be subject to contingencies (such as governing board approval) and other conditions beyond the selection of the application for funding, provided there is a reasonable expectation and resolve to provide the funding.

Under the Program, acquisition and rehabilitation must be performed shortly after recipient selection in order to permit the expeditious initiation of transitional housing operations. Unlike operating cost commitments, acquisition/rehabilitation cost commitments will not span multiple funding cycles and will not involve projections of the availability of funds years into the future. Thus, HUD will require applicants to present a firm commitment from the funding source for the acquisition/rehabilitation advance. A firm commitment must demonstrate the source's binding commitment to provide funds and the date upon which the funds will be available. To be acceptable, a firm commitment must not include any condition or contingency except the selection of the application for funding under the Program. HUD will consider the strength of the source's commitment under the leveraging threshold criterion (see paragraph IV.D.2.(iii), below) and the overall project feasibility threshold criterion (see paragraph IV.D.2.(v), below).

(7) *Miscellaneous matching issues.* One commenter asked whether an applicant would be permitted to use the proceeds of a loan secured by the property to be used in the Program toward its 50 percent share of acquisition/rehabilitation costs, if the applicant arranges for repayment of the loan from "non-HUD" income. Alternatively, the commenter asked whether HUD would allow the payment of debt service on a mortgage covering an acquired structure as an eligible operating expense.

HUD finds no problem with recipient's obtaining a loan on property acquired for use in the Program, and counting as much of the loan proceeds as are invested in the transitional housing program toward their leveraging contribution, as long as the debt is not repaid with Program funds. The guidelines, however, have been revised specifically to exclude debt service expenses in connection with the acquisition/rehabilitation of transitional housing from the definition of operating costs and, thus, from the operating cost leveraging computation. First, the statutory definition of operating costs (section 502(10)) is an exclusive listing of eligible costs, and does not include the payment of debt service for acquisition/rehabilitation. Moreover, to include these costs would dilute HUD's 50 percent matching contribution requirement. For example, if debt service were permitted as an operating cost, HUD would end up paying more than 50 percent of the acquisition/rehabilitation costs: HUD would pay 50 percent of these costs as an acquisition/rehabilitation advance *and* 25 percent of these costs as operating cost payments (*i.e.*, HUD would pay up to 50 percent of the debt service on the 50 percent of the acquisition/rehabilitation costs that were financed). The Department notes, however, that debt service on otherwise-eligible items of operating costs, such as furniture and equipment, would be eligible for operating assistance under the Program.

(c) *Computation of funding for annual operating costs.* The proposed guidelines stated that upon approval of an application requesting operating cost assistance, HUD would obligate amounts for the period sought, but not to exceed five years. Two commenters objected to this five-year term. These commenters took issue with HUD's determination that the limitation was necessary to provide a demonstration of adequate size. They also questioned our assumption that other funding sources would be available to recipients of acquisition/rehabilitation advances at the end of the initial five-year period of operations, and that these other sources would permit them to fulfill their 10-year operating requirement to avoid the repayment of the advance. Commenters argued that funding for operating costs should be provided for the maximum term that the recipient is required to operate the transitional housing—five years if the recipient receives only funding for operating costs and 10 years if the recipient receives operating costs and an acquisition/rehabilitation advance. Alternatively, commenters suggested that HUD should not state any term in the final guidelines, in order to provide maximum flexibility and innovation for the Program.

The Department continues to believe that the five-year limitation on funding for operating costs strikes an appropriate balance among a number of competing considerations. The five-year term coincides with the minimum period under the Act for which a recipient must agree to use a structure for transitional housing. Thus, this term would ensure that recipients have a steady stream of income to help them meet their responsibilities for the full period for which they are obligated to HUD to operate transitional housing under the Program.

Use of a longer term would decrease the number of transitional housing programs that could participate in the demonstration. The statute requires HUD to determine the costs and advantages of transitional housing for homeless persons. Given the range of homeless populations that may be served and the variety of programs that should be examined, HUD believes that it is obligated to obtain the maximum amount of information with the $5 million available for the Program. This means encouraging the broadest participation possible, and the five-year limitation on operating cost assistance is an important way of accomplishing this goal.

While the five-year term does not coincide with the 10-year minimum term for which a recipient of an acquisition/rehabilitation advance must operate to avoid repayment of the advance, this funding term will help ensure that the recipient will complete successfully the crucial start-up period of operations. While this does not *guarantee* that funding sources will be available to the

recipient after the fifth year, the successful completion of five years of operations should, at a minimum, enhance the recipients ability to attract funds to complete the 10-year obligation. Moreover, even if further funding is not available and the recipient cannot continue the operation of the structure as transitional housing, repayment of the acquisition/rehabilitation advance may be avoided if the recipient secures HUD's approval for the use of the structure for other charitable purposes.

One commenter asked if funding may be continued after the end of the five-year period. The answer is "no." The Department does not foresee any circumstances under which additional funding or "funding amendments" would be available. In our view, the present statutory framework and the approach adopted in the final guidelines establish a Program that provides adequate funding for the term of the demonstration.

As noted above, HUD will provide funding for operating costs for up to five years. The amount provided each year will be equal to an amount not to exceed the recipient's estimate of operating costs for the first year, less the recipient's leveraging amount. For example, a recipient's estimated costs for the first year of operation are $25,000. If the recipient has agreed to make a 60 percent leveraging contribution of $15,000, HUD would provide funding for operating costs of up to $10,000 each year, and would reserve a total of $50,000 for operating costs when the recipient is selected for funding. (The annual funding level will be subject to reduction for the reasons explained in paragraph IV.E.5., below.)

(ii) *Technical assistance.* The proposed guidelines stated that HUD would provide technical assistance in such matters as rent computation, compliance with Federal requirements, the availability of other Federal assistance, and advice on work write-ups and rehabilitation.

Commenters suggested additional areas where HUD could provide technical assistance. Two commenters suggested that HUD provide, technical assistance to applicants and to recipients regarding the supportive services that should be provided. Another commenter suggested that HUD assist in the drafting of resident lease agreements. (This commenter also suggested that HUD require recipients to have residents sign leases.)

We do not believe it is appropriate for HUD to provide technical assistance concerning the supportive services that should be provided to residents, nor to provide technical assistance in drafting leases or other agreements between recipients and residents. This is a demonstration program that is intended to determine the approaches that best facilitate the transition of homeless persons to independent living. The responsibility for the development of the approach to be used (including the selection of appropriate supportive services) and the implementation of this approach once it is developed (*e.g.* the drafting of documents containing the terms and conditions governing the relationship between the recipient and the resident including the contract prescribed in paragraph IV.E.4., below) belongs to the recipient, not HUD. Were the Department to become involved in the structuring and operation of the transitional housing, needed diversity and innovation would likely be lost, and the demonstration would be far less useful in identifying promising approaches to the homelessness issue. HUD will, of course, facilitate the exchange of information among recipients, and help recipients to learn from the experience of others while the demonstration is in progress.

One commenter recommended that HUD clarify that its rehabilitation and work write-up assistance is advisory only. The commenter noted that a larger role may result in the last-minute addition of costly rehabilitation items not required under local codes. HUD's role in the provision of technical assistance was clearly stated in the proposed guidelines to be advisory. Revision of the final guidelines is not necessary.

Finally, one commenter asked if HUD would provide technical assistance to applicants in the preparation of their applications. While such assistance does not constitute "technical assistance" under this Program, HUD will provide guidance in response to potential applicants' questions at the address and telephone number set forth at the beginning of this document.

2. Limitations on the Use of Assistance

(i) *Funding of existing programs.* The proposed guidelines stated that HUD would not provide assistance for existing facilities or programs that serve homeless persons, unless the applicant substantially increases the number of homeless to be served, substantially increases the level of supportive services to be provided to homeless persons, or proposes a substantial change in the use of existing facilities.

One commenter argued that some applications involving existing facilities should be funded, even though they do not fall within the exceptions described above. The commenter cited as examples projects where the existing transitional housing funding is short-term or where existing shelter funding is stretched to provide transitional housing services. This commenter urged HUD to examine applications for funding of existing projects on a case-by-case basis.

The cited provisions were proposed to increase the number of homeless persons assisted by transitional housing by ensuring that existing funds committed to the provision of housing and services to homeless persons will not be replaced by HUD funding. They also were intended to ensure that recipients assisted under the Program will establish and operate transitional housing programs in full compliance with the statute. HUD sees no reason to alter its guidelines and fund existing projects, unless a proposal falls within the cited exceptions.

Another commenter thought that the guidelines could be misread to prohibit the use of Program funds in conjunction with established programs, even though the HUD funds would be used entirely for new projects or the enhancement of services or facilities in existing projects. So that there will be no mistake on this point, the final guidelines at paragraph IV.B.3.(i), below, have been revised for clarity.

As noted above, the proposed guidelines stated that HUD may fund a proposal if the applicant proposes a substantial change in the use of existing facilities. One example cited in the proposed guidelines involved a change in use from an emergency shelter to transitional housing. A commenter argued that the example could have the unintended effect of supporting the conversion of emergency shelter beds to transitional housing beds, even though there is a well-documented lack of emergency beds. Another commenter urged clarification of this requirement to ensure that emergency shelters will not be funded under this Program.

The Department stands by its example: One of the changes in use that could be assisted under the Program is the conversion of an emergency shelter for the homeless to transitional housing. The Department does not intend this to imply support for such conversions, but only as a statement of eligibility for funding. The Department believes that the local providers of homeless housing and services are best qualified to analyze the needs of homeless persons in their community and to determine what facilties are required to meet those needs. The final guidelines are unchanged on this point.

As noted throughout the guidelines, the Program is not intended as a method merely to shelter homeless persons, but as a means of moving homeless persons toward independent living through the interim privision of housing combined with supportive services. Accordingly, it is unnecessary to revise the guidelines to clarify further that HUD will not fund projects under this Program that will provide emergency shelter facilities.

As a related matter, one commenter asked if HUD would permit an application that seeks assistance: (1) To expand operations and services offered to one homeless population at an existing facility, *and* (2) to establish and operate a new facility serving another homeless population. HUD does not wish to exclude automatically such applications, since they may (among other things) offer a unique opportunity for innovation in the form of consolidation of administrative and mangerial functions. However, applicants should be forewarned that it may be more difficult for such projects to be selected for funding. For example, the site, zoning, historic preservation and floodplain requirements must be met for *all* facilities, and there must be an unmet need for the expansion of the existing facilties and the establishment of the new facilties (see other threshold requirements at paragraph IV.D.2., below).

(ii) *Constitutional limitations.* Two commenters expressed concern about the statement in the proposed guidelines regarding constitutional limitations on the use of Program funds by primarily religious organizations. The proposed guidelines discussed limitations imposed on government assistance by the United States Supreme Court in furtherance of the First Amendment of the Constitution, which provides that "Congress shall make no law respecting an establishment of religion."

Reviewing the Supreme Court case law requirement that public assistance must have a primary effect that neither advances nor inhibits religion, the proposed guidelines pointed to decisions barring aid in the form of construction assistance to institutions which are "pervasively sectarian"—the term used by the Supreme Court to describe "an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission." *Hart* v. *McNair,* 413 U.S. 734, 742 (1973).

One commenter recognized the opportunity for all religious organizations to obtain grants under the Program for operating costs, but requesied reconsideration of the prohibition against providing acquisition/rehabilitation advances for existing structures to be owned or leased by pervasively sectarian organizations. The commenter noted the traditional role played by church organizations in the forefront of addressing social service needs.

The Department recognizes this important role. However, HUD believes the Supreme Court decisions place some real constraints on the extent to which pervasively sectarian organizations may be assisted.

The proposed guidelines described specific ways to facilitate participation by religious organizations. For example, they may establish independent nonprofit entities to provide transitional housing under the Program, as is done in the section 202 Loan Program for Housing for the Elderly or Handicapped. Futher, as noted by the commenter, the guidelines would not prohibit HUD from providing funding for operating costs, to pervasively sectarian entities, so long as the provision of housing and supportive servcies would be carried out in a manner free from religious influence and in accordance with conditions described in the grant agreement. And, of course, religious organizations that are not prevasively sectarian can obtain acquisition/rehabilitation advances, as well as funding for annual operating costs. Finally, no applicant that is a pervasively sectarian organization would need to establish an independent nonprofit entity for purposes of obtaining acquisition/rehabilitation advances, until its proposal was actually selected.

The second commenter resubmitted an identical comment that had been made with respect to HUD's proposed rule for the Emergency Shelter Grants Program. This commenter stated that a prohibition against use of funds by prevasively sectarian organizations to "renovate, rehabilitate, or convert buildings owned by primarily religious organizations or entities' would eliminate many of the institutions that are most experienced and effective in dealing with the homeless. As in the case of the Emergency Shelter Grants Program, here too in the demonstration program there are two types of assistance, and as noted above, all of these pervasively sectarian organizations can participate directly and indirectly. First, there is no prohibition against directly receiving operating cost assistance. Second, these institutions can participate indirectly by establishing nonprofit entities to obtain acquisition/rehabilitation advances. And non-pervasively sectarian religious organizations can receive both types of assistance directly.

This commenter stated a legal argument for providing funds for "public services and activities", although never formally identifying rehabilitation as an "activity." This legal argument cited three Supreme Court cases, including *Bradfield* v. *Roberts,* 175 U.S. 291 (1899), a time-honored decision recognizing that government assistance could be provided to a church-related hospital. The case continues to have vitality in demonstrating the principle that "whatever may be its initial appeal, the proposition that the Establishment Clause prohibits any program which in some manner aids an institution with a religious affiliation has consistently been rejected. E.g.. *Bradfield* v. *Roberts,.*" It is interesting to note that the quoted statement of this proposition is taken from *Hunt* V. *McNair,* the 1973 decision in which, just two sentences later, the Court made the statement quoted in the proposed guidelines:

> Aid normally may be thought to have a primary effect of advancing religion when it flows to an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission or when it funds a specifically religious activity in an othewise substantially secular setting. 413 U.S. 743.

The next case cited by the commenter is *Tilton* v. *Richardson,* 403 U.S. 672 (1971), in which construction assistance for a church-related college was not found to violate the Establishment Clause. But there the educational institution conformed to the profile of an essentially secular, although church-related, higher education institution.

The last case cited by the commenter is *Roemer* v. *Board of Public Works of Maryland,* 426 U.S. 736 (1976), another higher education case. *Roemer* expressly rearticulated the principles of *Hunt* v. *McNair, supra,* (1) that no aid "go to institutions that are so 'pervasively sectarian' that secular activities cannot be separated from sectarian ones, and (2) that if secular activities *can* be separated out, they alone can be funded." 462 U.S. 755.

The commenter asserts that the critical rationale for these cases was that the funds were provided for a valid secular purpose and that their primary effect was not to advance religion. But as noted above in the very cases cited, for the Supreme Court it has not been merely a question of the government assistance being used for secular activities, but that such secular activities must be conducted other than by those organizations that "are so pervasively sectarian" that secular activities cannot be separated from sectarian ones. *Roemer,* at 455.

The commenter concludes with citations to the 1983 Justice Department memorandum to HUD and the statement that "federal aid to religiously affiliated institutions in which secular activities can be separated out and exclusively funded may be constitutional." However, this statement follows the counterpart principle in the immediately preceding sentence—not cited by the commenter—that "federal aid to church-related institutions that are so pervasively sectarian that secular activities cannot be isolated from sectarian ones would violate the Establishment Clause." *Roemer* is cited for these propositions in the Department of Justice memorandum. Thus, the question remains whether a given institution is pervasively sectarian, as was made clear in the proposed guidelines.

The Department acknowledges the vital role played by religious organizations in meeting social service needs of the poor, including homeless persons, throughout American history. HUD is sensitive to the concerns expressed by religious organizations about limits on their opportunities for participating in the demonstration program and the Emergency Shelter Grants Program. To this end, the Department continues to explore mechanisms that would facilitate the role of such institutions within the framework of the Establishment Clause, as its principles have been laid down by the Supreme Court. In this connection, the Department has entreated religious organizations, and cities and urban counties seeking to use such organizations, to present viable arguments under the Supreme Court decisions to accomplish these worthwhile purposes.

The arguments or mechanisms advocated to date have not appeared fruitful, and this is understandable. The question is a difficult one. In fact, the Department understands that the Congressional Reference Service of the Library of Congress was asked by Senate Housing Subcommittee Staff to review HUD's identical position with respect to Federal assistance under the Community Development Block Grant program authorized by title I of the Housing Community Development Act of 1974. The Reference Service furnished written legal advice that HUD is upholding the principles and the requirements of the Establishment Clause, and even questioned whether HUD's stance on public services (for purposes of the demonstration program, the analogy would be funding for operating costs) might be too permissive under the Supreme Court cases.

In any case, the Department continues to welcome proposals to utilize the talents and commitment of religious organizations along the lines set forth in the proposed guidelines or in any other way compatible with the governing principles of the Establishment Clause handed down by the Supreme Court. Two lodestars regulate the search for such compatibility. First, to the extent the prohibition against aiding pervasively sectarian organizations impedes their participation, it may be productive to seek their participation or involvement in a way in which they do not receive "aid." Second, in exploring new mechanisms, considerable care must of course be exercised to avoid excessive entanglement between government and religion. *Lemon* v. *Kurtzman*, 403 U.S. 602, 612–613.

As it analyzes and pursues the constitutional and programmatic feasibility of such solutions, the Department is committed to maximizing the role of all experienced, committed social service providers, while remaining mindful of the Court's observation in *Lemon* v. *Kurtzman* that "every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years." 403 U.S. 612.

3. Coordination with Other HUD Programs

The proposed guidelines stated that HUD: (1) Will provide recipients with information concerning the availability of Federal housing assistance for residents upon their departure from transitional housing; (2) intends (subject to availability) to provide Section 8 Housing Vouchers to graduates of transitional housing; and (3) is considering offering applicants an opportunity to obtain HUD-owned single family units through the property disposition program.

Many commenters supported the provision of Housing Vouchers to residents upon their departure from transitional housing. Several, however, requested more information on the number of Housing Vouchers that will be made available to departing residents, and asked whether funds have been set aside for this purpose. HUD intends to use its best efforts to ensure that an adequate supply of Housing Vouchers will be available for this use. The number of Housing Vouchers available will, of course, depend on numerous factors, including the FY 1988 Housing Voucher appropriation and the willingness of PHAs to participate in this aspect of the Housing Voucher program. HUD will discuss these issues in the **Federal Register** document that will govern the uses of Vouchers for FY 1988.

One commenter urged HUD to provide an allocation of Section 8 Certificates to residents upon their departure from transitional housing. The Department believes that the Section 8 assistance to be provided to residents on their departure should be provided through the Housing Voucher Program, rather than the Certificate Program. Housing Vouchers provide eligible families with greater housing choice than do Certificates: Housing Voucher families are given greater opportunity to move into housing of the size, quality, and location of their choice—a factor that may be of crucial significance in efforts to help homeless persons complete and maintain their transition to independent living.

Several commenters recommended that HUD provide Section 8 assistance, including Housing Vouchers and Certificates, to residents of transitional housing. HUD will not provide Section 8 assistance for this use. First, the statute does not seem to contemplate use of Section 8 assistance for residents living in transitional housing. The Act specifies that each resident of housing assisted under the Program must pay as rent an amount calculated in accordance with section 3(a) of the 1937 Act, with a portion of any shortfall between the rental charges and costs of operating the housing eligible for operating cost assistance. This system seems complete: a rental charge calculated in the same manner as other 1937 Act authorities (including Section 8) and operating shortfalls met in part by Federal assistance. The Department does not believe that Congress would have established such a complete system if it had intended other forms of Section 8 assistance to be used in transitional housing.

In addition, the use of Section 8 assistance in transitional housing would impose stringent statutory requirements on project owners governing termination of tenancy requirements. The application of these requirements to transitional housing would be wholly inappropriate, and could frustrate the innovative potential of the Program. (See related discussion at paragraph F.3. of this section, below)

Three commenters supported HUD's decision to provide applicants with an opportunity to obtain HUD-owned single family property disposition units for use in the demonstration. They noted that this would allow available housing to be used in an efficent and effective manner,

and would permit agencies administering programs to spend more time and money working with residents to become self-sufficient within the applicable time limits. New provisions have been added to the final guidelines to clarify the procedures to be used by applicant in obtaining HUD-owned properties.

In addition to the assistance available under the cited HUD programs, one commenter urged HUD to allow recipients to use rental rehabilitation grants to rehabilitate existing structures for use in the Program. To the extent rental rehabilitation amounts may otherwise be used for the rehabilitation of transitional housing, HUD will not preclude their use in connection with the Program. HUD notes, however, that these grants cannot be used in the computation of the recipient's matching contribution. (See paragraph III.C.1.(i)(b)(4), above.)

Finally, one commenter urged HUD to permit recipients to lease units from local public housing authorities for use in connection with the Program. Such arrangements will not be permitted, since PHA properties that are suitable for tenancy should be reserved for public housing tenants. The 1937 Act contemplates the rental of public housing units to tenants who enter into leases, rather than rental to entities that sublease to others for residential purposes.

D. Application process

The proposed guidelines briefly outlined some of the application package requirements, and stated that applications would be due eight weeks after the final guidelines are issued.

Two commenters suggested that HUD extend the application deadline to 12 weeks to ensure that applicants have sufficient time to comply with all requirements. The final guidelines retain the eight-week application deadline, making all applications due on August 7, 1987. In the proposed guidelines, HUD anticipated that the eight-week time period would be difficult for some applicants to meet, and encouraged all potential applicants to take initial steps in the preparation of their submissions. While an extension might benefit some applicants, it would have a detrimental impact on HUD's ability to process applications, select successful recipients, and obligate all funds by the end of the fiscal year.

One commenter suggested that HUD restructure the application process and application submission requirements to resemble the Project Self-Sufficiency Demonstration and to require the submission of certain additional or substituted information. HUD has taken these comments into consideration and has revised the application submission requirements, as appropriate for this demonstration. These requirements are summarized at paragraph IV.C., below.

E. Selection Process

1. General

The proposed guidelines stated that the selection process would have four stages: (1) Threshold requirement review; (2) ranking; (3) environmental review; and (4) final selection. Some commenters argued that this process was excessive. To the extent the commenters addressed specific issues, their comments are discussed below.

Two commenters noted that the guidelines did not discuss the composition of the "review committee" that will select applications for funding, and urged HUD to include outside reviewers familiar with homeless persons and their problems. The "review committee" will be composed of members of HUD headquarters staff, including individuals that are well-versed in the needs of homeless people and HUD's selection procedures. While we do not foresee the need to bring in outside experts, we will do so if this action is necessary for the proper disposition of applications.

2. Threshold Criteria

Under the proposed guidelines, each applicant was required to meet certain threshold criteria in the first stage of the selection process. The threshold criteria included: (1) The form, time, and adequacy of the application; (2) the applicant's eligibility, financial responsibility, capacity, and legal authority; (3) leveraging requirements; (4) requirements concerning the proposed housing and supportive services; and (5) overall project feasibility. Threshold criteria issues raised by commenters are discussed below.

(i) *Applicant qualifications*—(a) *Capacity.* The proposed guidelines required applicants to demonstrate their ability to carry out the activities under the Program within a reasonable time after the execution of a grant agreement with HUD and in a successful manner. (This factor was also considered as a ranking factor.)

Two commenters argued that the threshold and related ranking criterion failed to give adequate consideration to the applicant's knowledge, experience, competence, and ongoing commitment in providing housing or supportive services to homeless persons. For example, one commenter argued that an applicant's experience in providing supportive services should be considered, even if the applicant had not previously provided housing to the homeless.

To clarify this point the final guidelines have been revised to state that in determining capacity under the threshold criteria, HUD will look to the extent and quality of the applicant's experience in establishing and operating housing and/or in providing or coordinating the provision of supportive services. Thus, under this threshold criterion, if an applicant does not have direct experience with transitional housing, HUD will consider the extent and quality of the applicant's activities in other areas that are relevant to the successful operation of transitional housing. HUD also considers this experience under the ranking criteria. For ranking purposes, however, HUD will assign the greatest number of points to applicants that have experience in establishing and operating housing for homeless persons and in providing or coordinating the provision of supportive services for its residents and that demonstrate, on the basis of past experience, the greatest ability to carry on activities under the Program expeditiously and successfully.

(b) *Legal authority.* The proposed guidelines required each applicant to demonstrate its legal authority to submit an application and participate in the Program. All applicants were required to submit a resolution, motion, or similar action that was duly adopted or passed as an official action by its governing body, authorizing the submission of the application and establishment and operation of the proposed transitional housing. In the final guidelines, HUD has revised this requirement to call for the applicant to *certify* that the resolution, motion, or similar action was adopted or passed. This change will relieve applicants of the burden of obtaining, copying, and submitting these actions to HUD, without weakening the substantive requirement that the proposed transitional housing must have the approval of the applicant's governing body.

One commenter suggested that municipalities be permitted to demonstrate that the chief executive officer or a designee has authorized the application. This proposed change has not been included in the final guidelines, since the unilateral action of the chief executive officer does not provide adequate evidence of the applicant's legal authority to participate in the demonstration. This requirement is consistent with OMB Circular A-102, Uniform Requirements for Assistance to

State and Local Governments, Attachment M, which contains a similar requirement for certification of an official action by the applicant's governing body.

Another commenter would permit applicants to delay the submission of evidence demonstrating the applicant's legal authority until after the application deadline. HUD's position throughout the final guidelines generally is that all application requirements must be met at the time the application is submitted. The Department sees no reason to provide an exception for this requirement.

(ii) *Leveraging.* Commenters raised many issues regarding the computation of the applicant's leveraging amount for the purposes of the threshold and ranking criteria. These issues are discussed at paragraph C.1.(i) (a) and (b) of this section, above.

(iii) *Proposed housing and supportive services.* Under this proposed threshold criterion, applicants were required to demonstrate: (1) A need for the proposed transitional housing; (2) the adequacy of the proposed services; (3) the adequacy of the proposed housing; (4) site control and zoning information; (5) consistency with historic preservation and floodplain requirements; (6) consistency with local government plans; and (7) the nondisplacing nature of the proposed activities. Except for the adequacy of supportive services, discussed at paragraph E.3.(ii) of this section, below, commenters discussed the following requirements.

(a) *Site control and zoning.* The proposed guidelines required the applicant to demonstrate that it has control of the proposed site and that the proposed use of the property is consistent with local zoning requirements. This demonstration was required at the time the application is submitted.

Numerous commenters objected to the requirement that site control and zoning must be demonstrated when the application is submitted. Commenters argued: (1) There is not enough time to fulfill these requirements before the application deadline; (2) the requirements force applicants to expend time and money for zoning and site control before funding, causing unnecessary expense and work on applications that do not receive funding; (3) the zoning requirement may exclude meritorious applications that are opposed in the community, and effectively denies applicants the ability to contest the validity of improper zoning actions; and (4) the requirements favor established projects. As alternatives, commenters would permit applicants to demonstrate site control and zoning at a later date; would permit applicants to meet the zoning requirement by showing evidence of the initiation of the zoning process or of a strong likelihood that appropriate zoning will be granted; or would give applicants with site control and zoning a preference for funding under the selection criteria.

The final guidelines retain the site control and zoning requirements. HUD continues to believe that these requirements are necessary to ensure that transitional housing is established and that intended beneficiaries are assisted at the earliest possible time. Past experience with zoning requirements demonstrates that delays can be extensive and, where the project is opposed in the community, can often result in the complete discontinuation of development. This requirement for speedy implementation is consistent with congressional intent for the Program, as reflected by the imposition of a six-month statutory deadline for the issuance of final guidelines and by the elimination of the requirement that the Program be implemented by rulemaking procedure.

While commenters claim that the time remaining before the application deadline is insufficient to complete all necessary actions and that the deadline will favor existing projects, the proposed guidelines foresaw that these problems could occur, and encouraged potential applicants to take immediate steps to fulfill these requirements. With the present application deadline of August 7, 1987, applicants that began these actions when the proposed guidelines were issued would have had almost 23 weeks to fulfill these requirements. In light of this time period, HUD does not believe that the requirement is unduly burdensome.

It is true that some otherwise meritorious applicants, despite their diligent efforts, may be excluded by the site control and zoning requirements and that some unsuccessful applicants may be required to expend time and money in order to file applications that meet the threshold criteria. However, HUD does not believe that these disadvantages outweigh the need for speedy implementation of this Program.

One commenter suggested that HUD use general rules to determine whether an application meets zoning requirements, rather than actual proof that a given project meets these requirements. For example, the commenter suggested that HUD find that any project with four or more units would be permissible, if the applicant showed that the area was zoned for apartments.

The determination that an application meets local zoning requirements must be based on the content of local laws. The Department believes that it is inappropriate to make assumptions regarding local zoning requirements, since if the assumptions prove wrong, development of the transitional housing could be significantly delayed or precluded altogether. In addition, to the extent the commenter is calling for establishment of a national set of zoning standards, the Department believes that this approach is not warranted.

(b) *Historic preservation.* The proposed guidelines required applicants to provide a letter from the State Historic Preservation Officer (SHPO) indicating that no acquisition or rehabilitation under the Program would involve a property that is listed under the National Register of Historic Places, is eligible for listing under the Register, is located within a historic district, or is immediately adjacent to a property listed on the Register.

Commenters objected that this requirement was too restrictive and would eliminate otherwise worthwhile projects. One commenter argued that the preservation requirement would eliminate the potential to use Program funding to preserve historic properties, while at the same time serving homeless persons.

Like the site control and zoning requirements, the historic preservation requirement was proposed to enable HUD to comply with the congressional mandate for speedy implementation of the demonstration and to benefit homeless persons as quickly as possible. While the guidelines may eliminate some applications, HUD believes that the potential for delay, coupled with out duty to ensure compliance with historic preservation requirements, outweight this impact.

One commenter suggested that the guidelines be revised to permit applicants with historic sites to demonstrate that they have waivers allowing them to rehabilitate their properties, have done so in the past, and have a working relationship with local governments and historic societies. HUD does not have the resources to make determinations whether waivers or approvals obtained by applicants will permit the activities proposed in their applications, or to make accurate judgments concerning the applicant's working relationship with local government and historic societies concerning these matters. The

requirement will be retained without change.

Another commenter argued that the requirement that no project be located in an historic district should be eliminated because it is too restrictive. HUD intended that the SHPO letter apply to acquisition/rehabilitation activities that affect "historic properties", as that term is used in the Historic Preservation Act and the implementing regulations (36 CFR Part 800) (*i.e.*, prehistoric and historic districts, sites, buildings, structures, or objects included in, or eligible for inclusion in, the National Register) and acquisition/rehabilitation activities performed on properties located adjacent to historic properties that are listed in the Register. To the extent that the requirement in the proposed guidelines extends to properties that are located in areas that are designated (by States or localities) as historic districts, but which are not included in or eligible for inclusion in the Register, we agree that the requirement is overbroad. Accordingly, the SHPO requirement is limited in the final guidelines to acquisition and rehabilitation funded under the Program that would involve (1) an historic property (*i.e.*, an historic or prehistoric district, site, building, structure, or object included in, or eligible for inclusion in, the National Register) or (2) a structure that is located adjacent to an historic property that is listed in the National Register.

HUD has revised the historic preservation requirement to require applicants to submit the SHPO letter *with* the application, rather than a reasonable time after the application. HUD's position throughout the final guidelines generally is that application requirements must be met at the application deadline. Given the deadline date of August 7, 1987, HUD believes that applicants that act with reasonable speed will be able to obtain the necessary SHPO statement.

(c) *Floodplains.* Under the proposed guidelines, each applicant was required to submit a statement that the proposed project is not located in any 100-year floodplain, as designated by the Federal Emergency Management Agency.

Two commenters objected to this requirement. They believed that it was restrictive and unnecessary to protect persons and property from flood hazards. One commenter suggested that floodplain requirements may be fulfillec by imposing restrictions against locations in floodways, by requiring HUD to follow an eight-step decisionmaking process for those sites located outside of a floodway (but within the 100-year floodplain), and by imposing various requirements for flood insurance and flood preparedness plans for facilities subject to flooding.

Like the site control, zoning, and historic preservation requirements, the purpose of the floodplain statement is to insure the speedy implementation of the demonstration program (see paragraph E.2.(iii) (a) and (b) above). While some applications may be eliminated, HUD believes that the need for implementation of this Program, without delay for the resolution of floodplain issues, outweighs this disadvantage.

We have reviewed the laws and authorities dealing with floodplains and related requirements, and have determined that the requirement for the submission of a statement that a facility will not be located in a 100-year floodplain does not fully address the requirements of Executive Order No. 11988—Floodplain Management and the Floodplain Management Guidelines for Implementing Executive Order No. 11988 (43 FR 6030, February 10, 1978). These guidelines prescribe a 500-year floodplain standard for "critical actions"—any activity for which even a slight chance of flooding would be too great. Critical actions can include activities that involve structures or facilities that are likely to contain occupants who may not be sufficiently mobile to avoid death or injury during flood or storm events. Such occupants would include individuals with mobility impairments. Accordingly, the final guidelines require applicants to state that the project is not located within a 500-year floodplain, if 50 percent or more of the living space in the structure is designed for residents with mobility impairments.

(d) *Consistency with local government plans.* Under the proposed guidelines, applicants were required to furnish a written statement from the unit or local government indicating that the proposal is consistent with local government plans.

Several commenters opposed this requirement, arguing that it would severely limit the number of proposals and that local governments may be openly hostile to transitional housing and would not provide such written statements, particularly for housing that would serve CMIs. One commenter suggested that this requirement be limited to large projects (50 or more units).

Commenters have misunderstood the purpose of this requirement. It does not give units of local government the power to veto a proposal. Rather, this requirement will provide HUD with information to determine whether the structure proposed for use in the provision of transitional housing will be available over the term of the applicant's commitment to HUD. For example, if the unit of local government plans to condemn the property for use as a roadway within five years of the date proposed for initial occupancy of the structure, it would be highly unlikely that the applicant could fulfill its statutory obligations for use of the structure. Local government plans could have an impact on HUD's determination of project feasibility.

Several commenters requested modifications or clarification of this threshold requirement. One commenter would waive this requirement where the applicant is a unit of local government. The requirement will not be waived for governmental units. An application may be filed by one department of a unit of local government, which may or may not have access to complete information regarding all plans for the structure. This requirement does not impose an undue burden on governmental applicants, and it will be retained in the final guidelines.

Under the proposed guidelines, the requirement for a written statement of local government plans is met if the applicant demonstrates that it made a written request to the unit of local government and did not receive a response within 30 days of the request. One commenter argued that a 30-day response period is unreasonable for large cities, and suggested that this period be extended to 90 days.

The 30-day response period was imposed to avoid unreasonable delay in the application process. HUD continues to believe that the 30-day period is appropriate. However, the final guidelines have been clarified to require applicants to forward late-filed responses to HUD. If such late-filed responses are received during selection processing, HUD will consider the information in the review of the applications.

One commenter asked what will happen if the local government responds to an applicant's request by stating that it will not provide a written statement. Under such circumstances, HUD will assume that there is no inconsistency with government plans, and will process the proposal as if the applicant did not receive a response to its request for the written statement.

One commenter would add a new requirement for local government notification: Applicants would have to notify the local government of their intent to file an application and include a program description. This notification would serve as a method for coordinating supportive services. HUD

will consider the extent to which the applicant will coordinate the supportive services available in the community in the ranking stage (see paragraph rIV.D.3.(iii), below). To make an effective showing under this ranking criterion, the applicant should work with the unit of local government to determine the services that are available. HUD will not, however, impose this new local government notification a threshold requirement.

(e) *Displacement.* The proposed guidelines required each applicant to submit a statement that its proposed activities will not result in the temporary or permanent displacement of any person or entity. Several commenters opposed this threshold requirement, arguing that there are few empty or abandoned buildings located in areas suitable for family living and that the prohibition will eliminate many meritorious applications from consideration. As an alternative, some commenters recommended that HUD evaluate the extent of displacement or the applicant's ability to accomplish any required relocation, rather than refuse to fund any project that involves displacement. One commenter urged that HUD fund projects where only commercial or industrial displacement is involved.

As noted in the proposed guidelines, HUD does not believe that a program designed to serve homeless persons should cause displacement that could create more homelessness. In addition, we note that opposition to necessary eviction and condemnation proceedings may unduly delay the timely implementation of the Program. Finally, failure to impose this requirement may dilute the limited funds available to implement the Program, since certain actions causing both residential and non-residential displacement may create obligations for relocation payments from Program funds under 24 CFR Part 42, Uniform Relocation Assistance and Real Property Acquisition for Federally Assisted Programs. While the imposition of the displacement prohibition may limit the number of buildings that are eligible for use in the Program, HUD believes that these considerations make the limitation fully warranted, and has not made the suggested changes to the final guidelines.

One commenter claimed that the prohibition against displacement will necessitate the total rehabilitation of nonresidential structures, and thus cause increased rehabilitation costs. The sweep of the commenter's assertion is too broad to have much meaning. The existence of structures—both residential and nonresidential—suitable for transitional housing will turn entirely on the composition of individual neighborhoods. The Department is confident that there is an adequate supply of residential facilities suitable for use in the Program, particularly in light of the relatively small size of the demonstration. The final guidelines retain the prohibition against displacement.

In response to one commenter's request, the final guidelines have been clarified to indicate that the displacement prohibition applies to an individual, family, partnership, corporation, or association that moves from real property or moves its personal property from real property as a direct result of the recipient's actual or impending acquisition or rehabilitation of real property, in whole or in part, for a project. For guidance with respect to acquisitions, recipient activities that would cause displacement if conducted by an agency under 24 CFR Part 42 are prohibited under this threshold criterion. HUD has made one further revision in the final guidelines to clarify that the displacement information must be in the form of an applicant's certification.

(iv) *Miscellaneous.* Under the proposed guidelines, applicants were permitted to submit proposals to serve designated populations of homeless persons. One commenter argued that HUD should have no role in the approval of the local targeting decision. We agree. HUD will not look behind the applicant's decision to serve one homeless population over another. The Department will, however, review the selected population to determine that there is an unmet need served by the proposal, that the proposal is responsive to that need and, if two or more homeless populations will be served, that the combination of populations will be appropriate. HUD may also make final selections based, in part, on the homeless population proposed to be served, in order to provide a reasonable balance in the demonstration (see paragraph IV.D.5., below).

3. Ranking Criteria

Under the proposed guidelines, all applications that meet the threshold requirements would be placed in priority funding order, based upon their scores on stated ranking criteria. The ranking criteria were based on the applicant's financial responsibility and capacity, the innovative quality of the proposal, the coordination of supportive services, leveraging, and cost reasonableness of supportive services. Commenters specifically addressed the following ranking criteria.

(i) *Innovative quality of the proposal.* The proposed guidelines provided that HUD would consider the innovative quality of the proposal in providing housing and supportive services. One commenter asked whether a new or unusual approach will take precedence over another approach that has proved workable in another area of the country. Consistent with the position taken in both the proposed and final guidelines, the two approaches would receive an equal number of points under this ranking criterion, as long as the second approach is new and unusual in the area to be served by the applicant.

(ii) *Coordination of supportive services.* Under the proposed guidelines, HUD would consider the extent to which the applicant would use other entities to provide supportive services, or has demonstrated that the services to be directly provided by the applicant are not available or readily accessible from another provider.

One commenter stated that it currently provides many supportive services for homeless persons, and was concerned that it will lose points under this criterion. To receive the maximum number of points under this criterion, the commenter asked whether the applicant must use outside funding sources to provide supportive services, and asked if an agency providing transitional housing can directly provide the supportive services under any circumstances.

As noted earlier, the proposed guidelines awarded the greatest number of points to applicants that proposed to use services provided by other entities. Applicants that provided services themselves could get the greatest number of points only if the services were not available or readily accessible to the residents from another provider.

The Department agrees with the commenter that the exception for applicant-provided services is too narrow, and could unnecessarily exclude applications from experienced service providers. Accordingly, the final guidelines are amended to include another exception to the "outside-service-provider" rule. This exception would cover situations in which the services are directly provided by the applicant but are not financed with funds provided under the Program and the cost of the supportive services is not included in the computation of the applicant's matching contribution. This approach would not disadvantage applications from entities already providing supportive services themselves, but would retain the guidelines' policy of using community-

based and other "outside" services to the greatest extent possible, by excluding applicant-provided services from Program assistance and leveraging calculations. Thus, under the final guidelines, HUD will consider (a) the extent to which the applicant will use other public or private entities to provide appropriate supportive services to the residents of the housing, or (b) if the services are to be provided directly by the applicant, the extent to which the applicant (1) will use funds that are obtained from sources other than under this Program and that have not been used as part of the applicant's leveraging computation, or (2) has demonstrated that the services that are to be provided by the applicant and funded under the Program are not available or readily accessible from other sources. Under this formulation, an applicant that will use other supportive services providers for 100 percent of its supportive services will be treated the same as an applicant that will provide 100 percent of the supportive services, if the services are not available or readily accessible elsewhere, or if the applicant will pay for these supportive services without using HUD funds.

Several commenters objected to the ranking criterion in the proposed guidelines, because they believed that it prohibited supportive services from being provided on-site. Commenters suggested that in some instances (*e.g.*, projects serving CMIs and the disabled), supportive services must be provided on-site. One commenter noted that New York law requires the provision of on-site services in some instances.

The *location* where services are provided is not relevant under this criterion. HUD would have no objection, for example, if the local Department of Social Services sent a caseworker to the transitional housing to work with residents, rather than require the residents to come to the DSS office.

(iii) *Cost reasonableness.* The proposed guidelines stated that HUD would rank proposals based on the extent to which the applicants' proposed costs are reasonable in relationship to the work done. One commenter argued that there should not be a cost reasonableness step, unless HUD can "identify recent experience in financing transitional housing."

HUD has not made this change. While HUD's direct experience with the evaluation of the cost reasonableness of transitional housing is limited, its experience in evaluating the costs of acquisition and rehabilitation of existing structures and its experience in evaluating supportive services under certain HUD programs, combined with the data that will be presented in the applications under this Program, should provide an adequate basis for making an informed decision with regard to the reasonableness of the costs proposed.

(iv) *Miscellaneous suggested priorities.* In addition to the ranking criteria contained in the proposed guidelines, commenters suggested additional priorities. Most of these were designed to favor one type of applicant (*e.g.*, applicants that are units of local government and that demonstrate the ability to marshal and coordinate private sector participation) or types of applications (*e.g.*, proposals serving females with children). As noted below, HUD intends to fund a variety of proposals and feels that such priorities would unduly narrow the scope of the demonstration.

4. Final Selection

After the ranking stage is complete, HUD will complete the environmental review stage (described at paragraph IV.D.4., below). The highest-ranked applications will be considered for selection, in accordance with their ranking scores and any adjustments made during environmental review.

Based on the $5 million funding for the Program, HUD estimated that it would fund a minimum of 5 to 10 projects. Two commenters addressed this estimate. One noted that this estimate indicated that HUD will grant each successful applicant from $500,000 to $1 million. The commenter suggested that the funding of a number of smaller projects ($50,000 to $100,000) would increase the innovative potential of the Program. Another commenter feared that this funding level meant that HUD was directing the Program at cities and urged HUD to fund at least one project in a town or rural area.

HUD does not wish to limit the demonstration to one size or type of proposal. Accordingly, as stated in the proposed and final guidelines, HUD anticipates funding a variety of projects differing in size, geographic distribution, and homeless populations to be served, and has reserved the right to substitute one or more highly-ranked applications for top-ranked applications, if such variety does not result from the ranking process. We believe that this authority is adequate to ensure diversity in the demonstration.

F. Program Requirements

1. Required Agreements

The proposed guidelines required the recipient to enter into a grant agreement with HUD. Significant provisions of the agreement included requirements addressing: The operation of transitional housing; limitations on the length of resident stay; the performance of resident assessments; the employment of a residential supervisor; the use of the structure; the compliance with State and local laws and ordinances regarding the condition of the structure and the operation of transitional housing; and reporting and recordkeeping. HUD received comments addressing the length of stay (discussed at paragraph B. of this section, above); use of the structure (discussed at paragraph F.2. of this section, below); and employment of the residential supervisor.

The proposed guidelines required each recipient to agree to employ a full-time residential supervisor. In addition to commenters that objected to the imposition of this statutory requirement (discussed at paragraph A. of this Section, above), several commenters sought guidance concerning what constitutes full-time supervision. Questions included: Does this require 24-hour per day supervision? Will the full-time requirement be satisfied by one or more part-time supervisors? Must the recipient hire a new employee to provide this supervision, or can it use existing staff? Can the recipient contract with another entity to provide these services? One commenter asked HUD to impose specific supervisory requirements for chronically mentally ill residents of transitional housing.

The level of expert knowledge required of the residential supervisor and the amount of supervisory guidance required by residents will vary with the homeless population and the program of supportive services proposed by the recipient. Accordingly, HUD has not imposed any minimum requirements regarding the level or quality of supervision, other than a general standard that residential supervision must appropriately address the needs of the homeless population to be served and must be sufficient to facilitate the movement of homeless persons to appropriate permanent housing and independent living. As long as the recipient meets this standard, residential supervision may be provided by existing staff, through employees hired specifically to perform residential supervisory duties, by two or more individuals, or through contracts with entities other than the recipient.

One commenter asked how much of the residential supervisor's salary would be paid by HUD. Recipients receiving only an acquisition/rehabilitation advance would receive no compensation from HUD for the expenses of the

residential supervisor. Residential supervision, however, is an operating cost under the Program, and may be considered in the computation of HUD assistance in the form of annual payments for operating costs.

In addition to the issues raised by commenters discussed above, HUD has clarified certain reporting and recordkeeping requirements in the final guidelines. Under the proposed guidelines each recipient would be required to keep any records and make any reports that HUD may require. The final guidelines add that HUD may require recipients to monitor former residents, for such reasonable time set by HUD, to determine if these former residents made a successful transition to, and continue to reside in, permanent housing.

2. Term of Commitment and Repayment of Advances

The proposed guidelines provided that each recipient receiving operating cost assistance must agree to operate transitional housing for not less than five years following initial occupancy and that recipients receiving an advance must operate transitional housing for not less than 10 years following initial occupancy. (Advance recipients, however, may cease operations after five years and be subject to an obligation to repay the advance, or may request a waiver of this obligation if the Secretary approves the use of the structure for another charitable purpose.) (Commenters arguing for the reduction, elimination, or waiver of the statutorily required five- and 10-year operating requirements are discussed at paragraph A. of this section, above.)

Both the five- and 10-year operating obligations begin with inital occupancy. The guidelines have been clarified to state that where an existing homeless program is funded (see paragraph IV.B.3.(i), below) to provide a substantial increase in the level of supportive service, initial occupancy is the date that the expanded services are first made available to the residents.

One commenter urged HUD to describe the uses that may be made of a structure acquired or rehabilitated under the Program. This commenter specifically asked if the guidelines would permit a recipient to purchase a building, use the building in the provison of housing and supportive services to homeless persons, *and* provide other programs that would complement the transitional housing. Another commenter suggested that HUD forbid the simultaneous use of a structure used under this Program for both emergency shelter and transitional housing.

Decisions concerning additional uses of the structure are best left to the recipient under the Program. Accordingly, the final guidelines will not forbid the simultaneous use of structures for purposes other than for transitional housing. Thus, a structure may contain facilities for both emergency shelter and transitional housing, may be used to provide supportive services to the public at large, or may include commercial space. Under these circumstances, however, the acquisition/rehabilitation advance will be available only in proportion to the use of the structure for transitional housing under the Program, and no portion of the funding for annual operating costs will be available to support the costs that are not related to the transitional housing to be assisted. Similarly, if an applicant holds or is donated an interest in a building and the building will be used for transitional housing and for other purposes, only that portion of the value of the building that will be used for transitional housing may be included in the computation of the applicant's leveraging contribution. The definition of "project" at IV.A., and paragraph IV.B.3.(v), below, reflect this determination.

In the proposed guidelines, HUD stated that it would enforce the recipient's repayment obligations through contractual actions on the grant agreement and that restrictions on the use of the structure would also be contained in covenants that would be recorded in the land records in the jurisdiction where the structure is located. For clarity, the final guidelines describe the covenants that will be recorded. These include: Restrictions on the length of residents' stay; recipient's five-year operation requirement; repayment conditions, if the applicant has received an advance; and resident rent requirements.

One commenter recommended that HUD specifically state that the recipient may sell the structure if HUD requests repayment. If the recipient has fulfilled its five-year operating requirement and wishes to discontinue transitional housing operations, HUD will not prevent the recipient from selling the structure to a third party. The Department will not, however, release the covenants governing the property's use until repayment of any acquisition/rehabilitation advance, in accordance with covenants and the Act. To facilitate a sale in these circumstances, HUD will participate in arrangements whereby sale of the property, repayment of the amounts due, removal of covenants will occur simultaneously.

One commenter requested that the final guidelines specifically state that the operating costs are not subject to repayment. The statute and guidelines clearly provide that only the acquisition/rehabilitation advance is subject to repayment. No revisions to the guidelines are necessary.

3. Resident Discharge at End of HUD-Approved Residency Period

During the development of the final guidelines, HUD became aware that existing providers of transitional housing are sometimes unable to discharge residents from their facilities, without according residents the same protections given to tenants of permanent housing under State and local laws, ordinances, and regulations. In some instances, the resulting delays caused by the operation of these laws (e.g. eviction procedures) have permitted residents to remain in transitional facilities for extended periods. For example, one New York City transitional housing facility had hoped to move individuals to permanent housing within six weeks. Under local ordinances, however, some residents have been able to delay their departure for more than two years, despite repeated attempts by the project management to discharge these residents.

Section 513(c)(1) of the Act requires each recipient to agree to limit the stay of individual residents to a period established by the Secretary. The statute, thus, makes it clear that Congress wants individuals and families to be discharged from transitional housing on or before the expiration of the HUD-approved limit applicable to the housing. In accordance with this requirement, the final guidelines provide that applicants must propose, and HUD approve, limitations on the duration of the stay of residents that are reasonable for the homeless population to be served. In no event may this period (or the stay of any individual resident) exceed 18 months. (See paragraph IV.E.1.(i), below.)

To the extent that State and local laws, ordinances, and regulations prohibit, or have the effect of prohibiting, recipients from discharging residents upon the expiration of the HUD-approved period of stay, HUD believes that a direct and irreconcilable conflict exists between the guidelines and these laws. Accordingly, while preemption of State and local law is only undertaken with caution and with adequate justification, HUD has determined that it must expressly provide for preemption of these State and local laws in the final guidelines.

Enforcement of a State or local law, ordinance, or regulation may be preempted by the Federal law in several circumstances:

(1) When Congress, in enacting a Federal statute, has expressed a clear intent to preempt State or local law;

(2) When it is clear, despite the absence of explicit preemptive language, that Congress intended, by legislating comprehensively, to occupy an entire field of regulation and has thereby left no room for the State to supplement Federal law; or

(3) When compliance with both State and Federal law is impossible, or when the State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Under this third situation (involving nonstatutory Federal preemption in regulations), Federal preemption must reflect a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984).

There is no explicit preemption language in the Act and it does not appear that Congress intended to preempt by comprehensive regulation. However, HUD believes that preemption is justified under the third test, because State and local law may stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress for the transitional housing demonstration. First, failure to preempt could alter significantly the nature of the Program as the Congress envisioned it. Local laws that prohibit, or have the effect of prohibiting, recipients from discharging residents upon the expiration of the HUD-approved period of stay would change the transitional nature of the Program to one that more closely resembles permanent housing. This is contrary to the statute and the legislative history of the Program. Throughout the statute and the legislative history, it is clear that residence in housing assisted under the Program is an interim placement—a temporary way station between homelessness and permanent housing.

Thus, the statute makes repeated references to the transitional nature of the Program and its goal of moving homeless persons toward independent living. For example, the statute provides that one of the goals of the Program is to provide transitional housing and supportive services to homeless persons, focusing on those capable of moving into independent living (section 511(a)); homeless persons served under the Program must be capable within a reasonable amount of time of living independently (section 502(7)); supportive services to be provided may include assistance in obtaining permanent housing (section 502(11)); recipients are selected, in part, on the innovative quality of the proposal to provide housing and supportive services in a manner that facilitates the transition to independent living (section 513(b)(2)); recipients are required to agree to operate transitional housing assisting residents in their transition to independent living (section 513(c)(1)); and, as noted above, HUD is required to establish, and recipients are required to agree to apply, a limitation on the length of residents' stay in transitional housing (section 513(c)(1)). Similar statements concerning the transitional nature of the Program are contained in the legislative history. (For example, the Senate report provides, "The committee believes that the demonstration should focus on homeless persons that are capable of moving back into permanent housing within a reasonable period of time." S. Rep. No. 314, 99th Cong. 2d Sess. 14 (1986).

Thus, the statute and legislative history clearly contemplate a temporary form of housing, which when coupled with necessary supportive services, would prepare homeless individuals and families to live independently in permanent housing. To the extent that State and local laws work to turn transitional housing into something more permanent, the demonstration's purposes of determining the costs and the social, financial, and other advantages of this type of housing would be frustrated.

Moreover, the application of these State and local laws could have a seriously disruptive impact on the operation of transitional housing projects. Recipient's financial and managerial energies may be misdirected at serving holdover residents and in pursuing legal remedies for the removal of these residents, rather than directed toward the provision of housing and supportive services to those individuals and families able to make the transition to permanent housing in a reasonable period of time. Residents who are aware that they cannot be forced to depart upon the expiration of their prescribed term of stay may be less motivated to make timely preparations for their transition to permanent housing. Those residents who nevertheless make a good faith attempt to make their transition may not receive necessary assistance because of the attention devoted to holdover residents. Finally, the holdover tenants will take up valuable places in transitional housing that could better serve other potential beneficiaries of the Program.

These disruptive impacts on project operations will undermine the goals of this Program to investigate means for an improved Federal response to the problems of homelessness through an analysis of the costs and advantages of transitional housing. Project costs will be skewed by such factors as the inclusion of unnecessary legal expenses and by higher per-resident operating costs. Moreover, the disruptive impacts may make it difficult to determine the social and other advantages of a particular approach or whether the approach is viable. While not all jurisdictions may have laws that prohibit or have the effect of prohibiting residents from discharge upon the expiration of their term of stay, given the modest size of this demonstration, the impairment of even one funded project could seriously undermine HUD's ability to make proper determinations on the costs, advantages and overall efficacy of the Program.

HUD believes that its preemption is a reasonable accommodation of the conflicting policies that involve the implementation of the Act. Our exercise of preemption is narrowly drawn and would invalidate State and local laws, ordinances, and regulations only to the extent that they prohibit or have the effect of prohibiting recipients from discharging residents at the end of the HUD-approved limit on the stay of residents in the housing. Recipients that wish to discharge a resident, for any reason, before the expiration of the HUD-approved duration of stay must comply with appropriate State and local laws, regulations, and ordinances. As noted below, HUD has imposed substitute protections for the benefit of residents to ensure that they are not erroneously discharged before the expiration of this term.

HUD has imposed procedural protections in the final guidelines designed to ensure that residents are not discharged from transitional housing before the expiration of their duration of stay. Under these procedures, the recipient is required to enter into a contract with the resident before the resident's admission to the housing. The contract must provide that the length of stay in the housing will be limited to a stated time period approved by HUD, and that no State and local law, ordinance, or regulation shall have force and effect to the extent that it prohibits, or has the effect of prohibiting, the recipient from discharging the resident from the project at the end of this time period. The guidelines also provide that

the recipient must personally serve a written notice on the resident not less than 30 calendar days before a proposed discharge. The notice must state that the resident will be discharged from the transitional housing at the end of the residency period and will not be permitted to remain in the housing after that time. The notice must also state that the resident has an opportunity to request the recipient to review the discharge date. Any request for review must be made not later than 10 calendar days before the end of the residency period. The review shall be limited to a determination of whether the recipient has calculated the resident's period of residency correctly.

Preemption was not addressed in the proposed guidelines. The proposed guidelines, however, contained specific provisions governing HUD's establishment of residential time limits and recipients' agreement to follow the HUD-approved limitation. Additionally, the proposed guidelines reflected the transitional, non-permanent nature of the Program. Since the failure to preempt could have a serious impact on the Program, HUD believes that this step is a logical outgrowth of the proposed guidelines and is appropriate for inclusion in the final guidelines.

4. Other Federal Requirements

(i) *Nondiscrimination and equal opportunity.* The proposed guidelines cited all the nondiscrimination and equal opportunity requirements that were applicable to the Program, including section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

One commenter urged the Department to be flexible in the application of the section 504 requirements. This commenter sought specific assistance concerning requirements for making existing structures accessible to the handicapped. HUD has not, as yet, published final regulations implementing section 504. However, even in the absence of such a regulation, HUD is authorized, and has the responsibility, to ensure compliance with this statute. Until final regulations are provided, recipients should look to the Department of Health and Human Services' section 504 regulations for federally assisted programs (45 CFR Part 84). Guidance relating to the accessibility of existing facilities can be found at 45 CFR 84.22.

Another commenter argued that the guidelines should be revised to include a reference to section 119 of the Rehabilitation, Comprehensive Services and Development Disabilities Amendments of 1978. This suggestion has not been incorporated in the final guidelines. Section 119 is not applicable to recipients under the Program. This statute imposes nondiscrimination obligations on executive agencies in the conduct of their programs and activities. Moreover, since section 119 was an amendment to section 504, it would not be necessary to refer specifically to this provision, even if it were applicable.

(ii) *Lead-based paint.* The proposed guidelines stated that the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–46) and HUD's implementing regulations at 24 CFR Part 35 were applicable to the Program. The final guidelines modify the requirements by imposing revised requirements for the elimination of immediate hazards. The modified requirements reflect the Section 8 Existing Housing regulations (24 CFR 882.109) (published in the **Federal Register** on January 15, 1987, 52 FR 1876, 1893–94) and only apply to structures that will be occupied by children under seven years of age. The guidelines include: Requirements for initial and annual inspections of buildings constructed before 1973; abatement of defective paint on applicable surfaces; testing for lead-based paint on chewable surfaces where the structure is occupied by a child under the age of seven who has an elevated blood level; tenant protection during abatement; and recordkeeping requirements.

(iii) *Davis-Bacon.* One commenter suggested that the guidelines should address the applicability of the Davis-Bacon Act to rehabilitation work under the Program. The Davis-Bacon Act depends upon provisions in other laws to establish its applicability. The transitional housing authority does not incorporate Davis-Bacon prevailing wage requirements. Thus, the Davis-Bacon Act is not applicable to the Program. The final guidelines have been revised accordingly.

(iv) *Occupancy standards.* One commenter suggested that the guidelines should provide that HUD's occupancy standards are waived for the Program. This change has not been incorporated in the final guidelines since there are no occupancy standards applicable to this Program.

IV. Guidelines

A. Definitions

The following definitions apply to the Program:

Applicant means any governmental or private nonprofit entity that submits an application for assistance under the Program. Governmental entities include those that have general governmental powers (such as a city, county, or State), as well as those that have limited or special purpose powers (such as public housing agencies). Applicant also includes two or more governmental or private nonprofit entities that submit a joint application.

Homeless person for the purposes of this Program, means a homeless individual or family which does not have access to traditional or permanent housing, but which is capable of living independently within a reasonable amount of time, not to exceed 18 months. A person is capable of living independently if, at the time the person is reviewed for admission to transitional housing, the recipient determines that:

(a) The resources reasonably expected to be available in the community after the person's anticipated departure from transitional housing will be adequate to meet the person's housing needs and requirements for continued services, and

(b) The person will understand the importance, and will be capable, of using these resources after his or her departure from transitional housing. Populations of homeless persons that recipients may serve may include (but are not limited to) victims of domestic violence, families with children, the unemployed, the chronically mentally ill, runaway children, or appropriate combinations of these populations.

Housing for homeless persons means one or more existing structures, or parts of one or more existing structures, that are suitable for the provision of housing and supportive services for homeless persons in an appropriate group setting. Some or all supportive services may be provided by arrangements with other service providers at facilities outside the structure.

HUD means the Department of Housing and Urban Development.

Operating costs means expenses that a recipient operating transitional housing incurs for:

(a) The administration, maintenance, minor or routine repair, and security of the housing;

(b) Utilities, fuel, furnishings, and equipment for the housing;

(c) Conducting resident supportive services needs assessments (see paragraph E.1.(ii) of this section, below); and

(d) The provision of supportive services to the residents of the housing. Operating costs does not include expenses that a recipient incurs for debt service in connection with a loan used to finance acquisition/rehabilitation costs under the Program.

Private nonprofit entity means a secular or religious organization

described in section 501(c) of the Internal Revenue Code that:

(a) Has a currently effective tax exemption ruling issued by the Internal Revenue Service under section 501(c) of the Internal Revenue Code;

(b) Has a functioning accounting system that is operated in accordance with generally accepted accounting principles;

(c) Has a voluntary board; and

(d) Practices nondiscrimination in the provision of assistance under this Program, in accordance with the authorities described in paragraph E.6.(i) of this section, below.

Project means one or more existing structures or parts of one or more existing structures owned or leased by a recipient for use under the Program.

Recipient means an applicant that HUD approves as to financial responsibility and that executes a grant agreement with HUD for assistance under the Program. The recipient must own (or lease) and operate housing for homeless persons, and provide (or coordinate the provision of) supportive services to the residents of the housing.

Rehabilitation means labor, materials, tools, and other costs of improving structures to a level that, at a minimum, meets or exceeds applicable State and local government health and safety standards. Rehabilitation includes repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing structures; installation of security devices; and improvement through alterations or additions to, or enhancement of, existing structures, including improvements to increase the efficient use of energy in structures. Rehabilitation does not include minor or routine repairs or cosmetic repairs or improvements.

Supportive services means:

(a) Assistance in obtaining permanent housing;

(b) Medical and psychological counseling and supervision;

(c) Employment counseling;

(d) Nutritional counseling;

(e) Assistance in obtaining other Federal, State, and local assistance available for residents of transitional housing facilities, including mental health benefits; employment counseling; medical assistance; and income support assistance, such as Supplemental Security Income benefits, Aid to Families with Dependent Children, General Assistance, and Food Stamps; and

(f) Other services proposed by the applicant in its application and approved by HUD, that are essential for maintaining independent living and that address the needs of the homeless persons served by the recipient. These services may (depending on the specific nature of the transitional housing and its residents) include child care, transportation, job placement, and job training.

Transitional housing means (as appropriate to the context):

(a) A program assisted under the demonstration: (1) That provides housing and supportive services for homeless persons and (2) that has as its purpose facilitating the movement of homeless persons to independent living within a reasonable amount of time, not to exceed 18 months for any homeless person; or

(b) The facilities in which the program is carried out. All part of the supportive services in transitional housing may be provided directly by the recipient or by arrangement with other public or private service providers. (See paragraphs D.2.(iv)(b) and D.3.(iii) of this section, below.)

B. Types of Assistance

1. Assistance Under the Program

HUD will provide three types of assistance under the Program: acquisition/rehabilitation advances, funding for annual operating costs, and technical assistance. Depending upon their proposed activities and the availabiltiy of other sources of funding, applicants may request both an acquisition/rehabilitation advance and funding for operating costs or they may seek only one of these types of assistance. HUD will make technical assistance available only in conjunction with the award of funds under the Program.

The three types of Program assistance are:

(i) *Acquisition/rehabilitation advances.* HUD will advance sums to recipients to help defray the cost of acquiring or rehabilitating (or both) an existing structure selected by the recipient for use as transitional housing. Advances may not exceed the lesser of (a) $200,000 or (b) 50 percent of the aggregate acquisition/rehabilitation costs. Advances are interest-free and, if certain conditions are met, are not repayable. (For the guidelines governing repayment of advances, see paragraph E.2. of this section, below.) As noted above, HUD limits advances to a maximum of 50 percent of the costs involved; the recipient must provide the other half with funds from other sources. (For a full discussion of the leveraging concept, see paragraph D.2.(iii) of this section, below.)

(ii) *Funding for annual operating costs.* HUD will provide funding of up to 50 percent of the annual operating costs (which include supportive services) for transitional housing. (See the immediately preceding paragraph for the leveraging requirement for acquisition/rehabilitation advances, and paragraph D.2.(iii) of this section, below, for a discussion of the leveraging concept.)

(iii) *Technical assistance.* Technical assistance is offered to recipients through HUD filed office staff in such matters as the computation of resident rent (see paragraph E.3. of this section, below), compliance with Federal requirements (see paragraph E.6. of this section, below), the availability of Federal housing assistance to residents upon their departure from transitional housing (see paragraph B.4. of this section, below), and engineering recommendations and other advice on rehabilitation plans and work write-ups. HUD will also facilitate the change of information among recipients, and help recipients learn from the experience of other recipients.

2. Commitment of Amounts for Operating Costs.

Upon approval of an application requesting operating cost assistance, HUD will obligate amounts for the period sought, not to exceed five years. Each annual funding level will be equal to an amount to exceed the recipient's estimate of operating cost for the first year of operation, less the recipient's leveraging amount. Each year, for up to five years, HUD will make operating cost payments to the recipient from the amounts obligated. The annual funding level will be subject to reduction for the reasons explained in paragraph E.5. of this section, below.

3. Limitations on the Use of Assistance

(i) *Funding of existing homeless programs.* HUD will not provide acquisition/rehabilitation advances or funding for annual operating costs for existing facilities or programs that currently serve homeless persons, unless the applicant proposes: (1) A substantial increase in the number of homeless persons for whom transitional housing will be provided (2) a substantial increase in the level of supportive services to be provided to homeless persons; or (3) a substantial change in the use of existing facilities, e.g., if existing facilities for the homeless that are not currently used for transitional housing (such as an emergency shelter for the homeless) will be used to provide transitional housing, or if an applicant currently providing transitional housing

proposes to serve an additional or alternative segment of the homeless population.

If such an applicant is selected for funding, assistance under this Program will be limited to 50 percent of the increased operating costs and 50 percent of the increased cost of acquisition/rehabilitation attributable to the increased number of homeless persons for whom transitional housing would be provided, the increased level of supportive services to be provided, or the change in use.

(ii) *Leases.* Acquisition/rehabilitation advances are not available to help defray the costs of acquiring a lease on existing property. Advances are available for the rehabilitation of leased property, if the lease runs for a term of at least 10 years after the date of initial occupancy of the housing. Rental payments under a lease are an allowable operating expense, and HUD will permit the inclusion of these expenses in the computation of the annual operating costs.

(iii) *New construction.* Assistance under the Program is limited to the acquisition or rehabilitation (or both) of existing structures. Assistance may not be used for the new construction of housing for homeless persons.

(iv) *Constitutional limitations on the use of Program funds by primarily religious organizations.* HUD will not select an application for funding if the application seeks an acquisition/rehabilitation advance for a structure to be owned or leased by a pervasively sectarian organization. HUD may select an application for funding of annual operating costs to a pervasively sectarian organization, but HUD will require pervasively sectarian organization to provide housing and supportive services in a manner free from religious influences and in accordance with conditions described in the grant agreement.

A pervasively sectarian organization may establish an independent private nonprofit entity to provide transitional housing. The independent entity may receive all forms of assistance available under the Program. HUD does not require the formation of the independent private nonprofit entity before a proposal is selected. The pervasively sectarian organization may apply on behalf of the independent entity. the application will be reviewed on the basis of the pervasively sectarian organization's financial responsibility and capacity, and its commitment to provide appropriate resources to the independent entity after formation. (See paragraph D.2.(ii)(b) and (c), and paragraphs D.3(i)(a) and (b) of this section, below.) Additionally, the pervasively sectarian organization is required to demonstrate site control under paragraph D.2.(iv)(d) of this section, below, and a commitment to transfer conrol of the site to the independent entity after its formation. Since the independent entity is not in existence at the time of the application, it will be required to demonstrate that it meets the definition of private nonprofit entity and has the appropriate legal authority to participate in the Program, following selection. (See paragraph D.2.(ii)(a) and (d) of this section, below.) Where such an independent entity is selected for funding, the obligation of funds will be conditioned upon the compliance with these requirements.

(v) *Structures used for multiple purposes.* Structures used to provide transitional housing under the Program may also be used for other purposes. For example, a structure may contain facilities for an emergency shelter and for transitional housing, may be used to provide supportive services to the public at large, or may include commercial spaces. Under these circumstances, however, the acquisition/rehabilitation advance will be available only in proportion to the use of the structure for transitional housing, and no portion of the funding for annual operating costs will be available to support the costs that are not related to the transitional housing to be provided. If the applicant holds or is donated an interest in a structure and the structure will be used for multiple purposes, only that portion of the value of the structure that will be used for transitional housing may be included in the computation of the applicant's leveraging computation under paragraphs D.2.(iii) and D.3. (iv) of this section below.

4. Assistance Under Other HUD Programs

HUD will provide Housing Vouchers under section 8(o) of the United States Housing Act of 1937 for eligible homeless persons upon their departure from transitional housing, if such assistance can be made available through local public housing agencies participating in the Voucher Program and there is adequate funding authority for this purpose. In addition, HUD, in cooperation with PHAs and units of local government, will make HUD-owned single family properties in its inventory available for purchase to interested applicants for use as transitional housing.

To obtain these properties, potential applicants may request a listing of available properties from the HUD Field Office, Property Disposition Branch. If the potential applicant wishes to purchase a property or properties, it must request the PHA or unit of local government to enter into a lease/option agreement with HUD. Under the terms of the agreement, HUD will lease the property to the PHA or unit of local government for six months for one dollar. The lease/option agreement will state that the PHA or unit of local government may purchase the property at a stated price during the lease period, and will require the PHA or unit of local government to assign all righs under the agreement to the applicant. Applicants demonstrating an assignment of rights under a lease/option agreement when the application is filed, will have site control of the property under paragraph D.2.(iv)(d), of this section, below. If the option is not exercised, the lease/option agreement will expire at the end of six months, and the property will be returned to HUD's inventory.

C. Application Process

HUD has developed an application package prescribing the information that applicants must submit. The application package will be provided upon the written request of any party made to the address set forth in the beginning of this document. Applications must be on the application forms prescribed by HUD and must be received at that address by 5:45 p.m., August 7, 1987. Late-filed applications will be rejected.

The application package requirements include: (1) Applicant data (identity, evidence of eligibility, description of past experience, legal authority to submit the application and operate proposed housing, and financial data for each of the past three years of applicant's existence); (2) information regarding the structure to be used (site control, zoning, historic preservation data, information concerning the consistency of the proposal with local goverment plans, a description of the building and of the proposed rehabilitation, and an appraisal, if building fair market or fair rental value is used as leverage); (3) a narrative description of proposed operations (homeless population to be served, number of individuals to be served, procedures for resident selection and assessment, supportive services required by residents, the method that the applicant will use to provide or coordinate the provisions of such services, projected length of resident stay, etc.); (4) development schedules; (5) evidence of need for transitional housing; (6) project financial data (assistance requested, five-year operating budget, documentation of

sources and amounts of applicants leveraging contribution, etc.); and (7) applicant certifications of compliance with guideline requirements.

HUD headquarters will process all applications and select the successful applicants. HUD will make its final selections and obligate funds as soon as the applications can be processed. HUD intends to complete the selection process and the obligation of funds by the end of fiscal year 1987. No information regarding the status of applications will be released until final selections are made.

D. Selection Process

1. Overview

The selection process has four stages. In the first stage, HUD will determine whether an application meets the threshold criteria discussed in paragraph D.2. of this section, below. An application that does not meet all the threshold criteria will not advance to the next state and will not be eligible for funding under the Program.

Applications that meet each of the threshold criteria will advance to the ranking stage. HUD will evaluate each application under the ranking criteria described in paragraph D.3 of this section, below, and will rank all applications in priority order on the basis of the overall points awarded to them on the ranking factors.

After the completion of the ranking in the second stage, a number of highest-ranked applications will advance to the third stage for compliance review in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Environmental reviews will not be performed on all applications ranked under the second stage. Rather, HUD will review the number of highest-rated applications that it determines necessary to ensure an adequate pool of applications for the final selection process. Applications that do not move to this third stage of processing will not be selected for funding. In this third stage, any application that requires the preparation of an environmental impact statement (EIS) will be ineligible for funding. Additionally, HUD will make adjustments to the rating scores based on facts that are disclosed during the environmental review.

In the fourth stage, HUD will consider for final selection the applications that advance from the third stage review, with any rating adjustment made on the basis of the environmental review. HUD will find the highest-rated applications, but reserves the right to fund other applications that successfully completed the third stage, if necessary to ensure reasonable diversity in the demonstration, as discussed in more detail in paragraph D.5. of this section, below.

2. Threshold Criteria

Applicants must meet each of the following threshold criteria (as modified for independent private nonprofit entities to be established by pervasivly sectarian organizations under paragraph B.3.(iv) of this section, above):

(i) *Form, time, and adequacy of the application.* The application must be filed in the form and within the time periods established by HUD, include all the required elements, and contain evidence or information sufficient to support each of its elements.

(ii) *Applicant.*—(a) *Eligibility to receive assistance.* The applicant must demonstrate that it meets the definition of a governmental or private nonprofit entity (as defined in paragraph A. of this section, above).

(b) *Financial responsibility.* The applicant must demonstrate that it is finacially responsible. To show financial responsibility, applicants must demonstrate that they will be able to establish and operate the proposed transitional housing for the term of their commitment to HUD with the finances that are, or are reasonably expected to be, available to them. In making this determination, HUD will consider factors such as the past financial history of the applicant, its current and anticipated financial outlook, the amount of funding that will be committeed under the proposal, and the applicant's other financial responsibilities. (This factor is also a ranking criterion (see paragraph D.3.(i)(a) of this section below).)

(c) *Capacity.* The applicant must demonstrate that it has the ability to carry out activities under the Program with a reasonable time after execution of the grant agreement with HUD and in a successful manner. In making this determination, HUD will consider the extent and quality of the applicant's past experience in establishing and operating housing and/or in providing or coordinating supportive services. HUD will also consider the ability of the applicant's personnel to perform administrative, managerial, and operational functions necessary to the successful development and operation of transitional housing. (This factor is also a ranking criterion under paragraph D.3.(i)(b), below.)

(d) *Legal authority.* (1) The applicant must demonstrate that it has the legal authority to participate in the Program and to carry out activities in accordance with Program requirements and the requirements of other applicable Federal law.

(2) Each applicant must certify that a resolution, motion, or similar action has been duly adopted or passed as an official act by its governing body, authorizing the submission of the application under the Program and the establishment and operation of the proposed transitional housing if HUD selects it for funding.

(iii) *Leveraging.*—(a) *General.* Each recipient must match the amount of the acquisition/rehabilitation advance and annual operating costs to be provided under the Program with at least an equal amount of funds from other sources.

(b) *Documentation.* The applicant must provide appropriate documentation indicating the sources and amounts of the applicant's leveraging contribution. If the source of the applicant's contribution is an entity other than the applicant (e.g., funding provided through State or local agencies), HUD must find that the documentation is sufficient to demonstrate a commitment to provide the funds if the application is selected for funding under the Program. For purposes of the Program, the commitment to provide funds for operating costs may be in the form of a letter of intent demonstrating the funding source's reasonable expectation and resolve to provide a stated amount of funds at a stated date in the future, if the application is selected for funding. The letter of intent may be subject to contingencies (e.g., governing board approval) and other contingencies beyond the selection of the applicant for funding, provided there is a reasonable expectation and resolve by the source to provide the funding. The commitment to provide funds for acquisition/rehabilitation costs must be a firm commitment from the funding source. This firm commitment must demonstrate the source's binding commitment to provide funds and the date upon which funds will be available. To be acceptable, a firm commitment must not include any condition or contingency except the selection of the applicant under the clause in determining the proposal's feasibility under paragraph IV. D.2.(v) of this section, below.

(c) *Assistance categories.* Recipients must meet this matching requirement for *each* category of assistance received. The most HUD will provide for acquisition/rehabilitation advances or annual operating costs is 50 percent of their *respective* costs. No match is required for technical assistance. (The

acquisition/rehabilitation advance is also subject to the $200,000 limitation discussed at paragraph B.1.(i) of this section, above.)

(d) *Existing programs.* Applicants seeking funding for existing programs (see paragraph B.3.(i) of this section, above) must commit *new* funds in order to satisfy the leveraging requirement. The resources necessary to maintain and operate the program *at it current level* are excluded from the leveraging calculation.

(e) *"In-kind" contributions.* "In-kind" contributions are excluded from the leveraging calculation, including the value of contributions of supportive services by outside service providers. (These services, however, may be considered under paragraphs D.2.(iv) and D.3.(iii) of this section, below. HUD will, however, include in the leveraging computation contributions of existing structures or parts of existing structures to be used for transitional housing. HUD will permit limited use of the value of existing structures in the leveraging computation. If an applicant holds or as been donated an *ownership* interest in a structure, the applicant may use the fair market value of its interest in the structure as its contribution only for the *acquisition/rehabilitation advance.* If the applicant holds or has been donated a *leasehold* interest in a structure, the applicant may use the fair rental value of the structure as its leveraging contribution only for *annual operating costs.* The value of a structure in which an applicant has an ownership interest may not be used to compute the applicant's leveraging contribution for operating costs. The value of a structure in which an applicant has a leasehold interest may not be used to compute the value of the applicant's leveraging contribution for an advance. To be accepted for consideration by the Department, the applicant must support the fair market value or fair rental value of a structure with an appraisal prepared by an qualified real estate appraiser.

(f) *Other federally assisted programs.* Except for funds made available under HUD's Community Development Block Grant program, applicants may not include funds provided under a federally assisted program in the computation of their portion of the leveraging requirement.

(g) *Rental income.* Rental amounts paid by residents of transitional housing under paragraph E.3. of the section, below, may be included in the applicant's contribution for leveraging of annual operating costs, if the rental amounts are substantiated. An applicant may substantiate rental amounts based on the rental income experience of the applicant or others, indicating the amount of income that residents are likely to receive. The estimate of resident income must be adjusted to take into account the length of time necessary for homeless persons to qualify for Federal, State or local income-support assistance or to find employment, and any other factors that may reasonably be expected to affect the amount and timing of resident income. To compute the estimate of rental income, anticipated resident income must be adjusted to reflect the rental income calculation requirements of paragraph E.3. of this section. Alternatively, for the purposes of computing the rental amount for leveraging, the applicant may assume that rental income to be received from residents will be equal to 10 percent of the resident income estimate.

(The leveraging factor is also a ranking criterion (see paragraph D.3.(iv) of this section, below).

(iv) *Proposed housing and supportive services.*—(a) *Need.* Applicants must demonstrate that an unmet need for the proposed transitional housing exists in the area to be served and that this need is likely to continue through the term of the applicant's commitment to HUD. Need may be demonstrated by information such as (1) estimates, based on past experience in the community, of unmet demand for the proposed transitional housing by the homeless population to be served; (2) present need for the proposed transitional housing, based on estimates of the homeless population to be served; or (3) projections of future need for the proposed transitional housing.

(b) *Adequacy of the proposed supportive services.* Applicants must demonstrate that the supportive services proposed (including the proposed job requirements of the residential supervisor (paragraph E.1.(iii) of this section, below)) approximately address the needs of the homeless population to be served, are are sufficient to facilitate the movement of the homeless persons to appropriate permanent housing and independent living. In determining the adequacy of proposed services, HUD will assess both the supportive services to be provided to the transitional housing residents by the applicant, and those to be provided through other private and public organizations. These services may be provided on-site, or off-site if the services are readily accessible to the homeless population to be served. Services are readily accessible if residents can get to the services on their own, or if transportation is provided to the site where the services are provided. Where services are to be provided through other private and public organizations, the applicant must secure a letter of intent from each organization, indicating its willingness and ability to provide the services to the residents of the housing, and must attach these letters to the application. (The coordination of supportive services is a ranking criterion under paragraph D.3.(iii) of this section, below.)

(c) *Adequacy of the proposed housing.* Applicants must demonstrate that the proposed structure(s) and site(s) are appropriate for: (1) The provision of housing and supportive services in a suitable group setting and (2) the homeless population to be served by the applicant.

When determining whether a structure(s) will be suitable for the provision of supportive services, HUD will consider whether the structure(s) is designed to permit the provision of proposed on-site supportive services, and whether any proposed off-site supportive services are readily accessible from the housing.

(d) *Siting and zoning.* Applicants must meet the following four siting and zoning requirements at the time of the application:

(1) The applicant must demonstrate that it has control of the site involved. For example, the applicant may demonstrate that it owns or has an option to purchase, or leases or has an option to lease, the structure involved;

(2) The applicant must demonstrate that the proposed use of the site is permissible under applicable zoning ordinances and regulations;

(3) The applicant must provide a letter from the State Historic Preservation Officer (SHPO), indicating that no acquisition or rehabilitation funded under the Program would involve an historic property as defined in 36 CFR 800.2(e) (*i.e.,* an historic or prehistoric district, site, building, structure or object included in or eligible for inclusion in the National Register of Historic Places) or would involve a structure that is immediately adjacent to a historic property that is listed on the Register; and

(4) The applicant must submit a statement that the proposed project is not located in any 100-year floodplain, as designated by maps prepared by the Federal Emergency Management Agency (FEMA). If 50 percent or more of the living space in the structure is designed for residents with mobility impairments, the applicant must submit a statement that the project is not located in any 500-year floodplain, as designated on FEMA maps.

(e) *Consistency with local government plans.* Applicants must furnish a written statement from the unit of general local government in which the proposed transitional housing is located, indicating that the proposed use of the structure and site for transitional housing is not inconsistent with any plan of the local government that may have an effect on the use of the structure and site for this purpose. This requirement is satisfied if the applicant demonstrates that it made a written request to the unit of local government for the statement and has not received the statement within 30 days of the request. Applicants must immediately forward to HUD any written statement received from the unit of local government after the expiration of this 30-day period.

(f) *Displacement.* Each applicant must certify that its proposed activities will not result in the temporary of permanent displacement of any person or entity. HUD will not fund applications that will cause any individual, family, partnership, corporation, or association to move from real property or to move its personal property from real property because of an actual or impending acquisition or rehabilitation of real property, in whole or in part, for a project.

(v) *Proposal feasibility.* Each applicant must demonstrate that its proposal for transitional housing, when viewed as a whole, is operationally feasible and provides adequate housing and supportive services to homeless persons to facilitate their transition to independent living within a reasonable time.

3. Ranking Criteria

In the second stage of the selection process, all applications that meet the above threshold requirements will be placed in priority funding order, based upon their scores on the following ranking criteria:

(i) *Applicant.* HUD will give more weight to the ability factor than any other ranking criterion. The elements addressing an applicant's ability are as follows:

(a) *Financial responsibility.* HUD will consider the applicant's relative ability to establish and operate the proposed transitional housing for the term of its commitment to HUD with the finances that are, or are reasonably expected to be, available to it. The factors HUD will consider in making this judgment are discussed in paragraph D.2(ii)(b) of this section, above.

(b) *Capacity.* HUD will consider the applicant's relative ability to carry out activities under the Program within a reasonable time after execution of the grant agreement with HUD and in a successful manner. The factors HUD will consider in making this judgment are discussed in paragraph D.2(ii)(c) of this section, above. HUD will assign the greatest number of points under this criterion to applicants that have experience in establishing and operating housing for homeless persons and in providing or coordinating supportive services for its residents and that demonstrate, on the basis of prior experience, the greatest ability to carry out activities under the Program expeditiously and successfully.

(ii) *Innovative quality of proposal.* HUD will consider the innovative quality of the proposal in providing housing and supportive services for homeless persons in manner that facilitates the transition to independent living. In assessing an application under this factor, HUD will consider the degree to which the applicant demonstrates that:

(a) The proposal uses an approach to transitional housing that is new or unusual in the area to be served by the applicant, and that holds promise of successfully facilitating the transition of homeless persons to independent living; and

(b) The new or unusual approach that the applicant will use would be replicable by others.

(iii) *Coordination of supportive services.* HUD will consider (a) the extent to which the applicant will use other public or private entities to provide appropriate supportive services to the residents of the housing, or (b) if the services are to be provided directly by the applicant, the extent to which the applicant, (1) will provide the services with funds that are obtained from sources other than under this Program and that have not been used as part of the applicant's leveraging contribution (see paragraph D.2.(iii) of this section, above), or (2) has demonstrated that the services are not available or readily accessible to the residents from other sources. HUD will assign the greatest number of points under this element to applicants that meet one or more of these tests to the greatest extent.

(iv) *Leveraging.* HUD will consider the extent to which the applicant proposes to match the amount of assistance to be provided under the Program with more than an equal amount of funds from other sources. Requirements for matching amounts are discussed at paragraph D.2.(iii) of this section, above.

(v) *Cost reasonableness.* HUD will consider the extent to which the applicant's proposed costs in acquiring or rehabilitating housing under the Program, and in operating the housing and providing supportive services, are reasonable in relation to the work done and the goods and services purchased.

4. Environmental Review

In the third stage of the selection process, HUD will conduct an environmental review of a number of the highest-ranked applications, as ranked under paragraph D.3 of this section, above. Environmental reviews will not be performed on all applications ranked under the second stage. Rather, HUD will review the number of highest-rated applications necessary to ensure an adequate pool of applications for the final selection stage. Applications that do not move to this third stage of processing will not be selected for funding under the Program.

In conducting the environmental review, HUD will assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR Part 50. Any application that requires an Environmental Impact Statement (EIS) (generally, those applications that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR Part 50, Subpart E) is not eligible for funding.

As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures to mitigate environmental impacts are taken. (See *e.g.*, 24 CFR Part 51). Accordingly, HUD will adjust rating scores of such applications, based on the anticipated time delays in adopting appropriate impact mitigation.

The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD will make further adjustments to the ratings based on the information revealed during the environmental review.

5. Final Selection

In the final stage of the selection process, the highest-ranked applications will be considered for final selection in accordance with their rank order, as determined under paragraph D.3 of this section and any adjustments made during environmental review under paragraph D.4. of this section. If the top-rated applications under the ranking criteria described above involve projects that predominantly serve one geographic area, primarily serve one homeless population, or are

substantially of the same project size (in terms of the number of homeless persons served), HUD may substitute one or more highly rated applications to ensure reasonable variety in the demonstration.

E. Program Requirements

1. Required Agreements

Recipients must make the following agreements with HUD for any structure for which assistance under the Program is provided:

(i) *Operation of transitional housing.* Each recipient must agree to operate transitional housing in accordance with the provisions of these guidelines. In addition, each recipient must agree to limit the stay of its residents to a period that is reasonable for the homeless population to be served, but in no event could this period (or the stay of an individual resident) exceed 18 months.

The applicant must propose in its application a limitation on the stay of residents and must demonstrate that the proposed time period provides an appropriate opportunity to permit members of the homeless population to be served to move to independent living.

(ii) *Assessments.* Each recipient must agree to assess the supportive services required for each resident as part of his or her admission to transitional housing. This assessment must be designed to identify all supportive services required by the resident to facilitate the transition to independent living. It must also include an individual action plan identifying the steps that the individual and the recipient plan to take over a specified period of time to enable the individual to reach the goal of independent living.

HUD encourages, but does not require, reassessments of residents during their stay in transition housing. The cost of conducting initial assessments and reassessments are included in the definition of operating costs (see paragraph A. of this section, above) and are eligible for assistance under the Program.

(iii) *Residential supervisor.* Each recipient must agree to employ a full-time residential supervisor with sufficient expert knowledge to provide, or to supervise the provision of, supportive services to the residents of transitional housing. The recipient must agree to employ a residential supervisor throughout the term of its commitment to HUD to operate transitional housing. (The term of the recipient's commitment to operate transitional housing is discussed at paragraphs E.1.(iv) and E.2. of this section, below.)

The proposed job requirements of the residential supervisor are considered by HUD in assessing the adequacy of the supportive services. (See paragraph D.2.(iv)(b) of this section, above.)

(iv) *Use of structure.* Each recipient must agree to use the structure for which assistance is provided as transitional housing for not less than five years following its initial occupancy.

(v) *State and local requirements.* Recipients must agree to comply with all State and local requirements regarding the condition of the structure to be used in the demonstration (e.g., the structure must meet (or after rehabilitation will meet), and will continue to meet, applicable State and local standards of being in a safe and sanitary condition). Except as provided in paragraph E.4. of this section, below, recipients must also agree to comply with all State and local requirements regarding the operation of transitional housing, such as State and local licensing requirements.

(vi) *Reporting and recordkeeping.* Each recipient must keep any records and make any reports that HUD may require. HUD may require recipients to monitor former residents, for such reasonable time set by HUD, to determine if the former residents made a successful transition to, and continue to reside in, permanent housing.

2. Term of Commitment and Repayment of Advances

Each recipient of assistance under the Program must use the structure for which assistance is provided as transitional housing for not less than the five-year period following the initial occupancy of the housing. After five years, a recipient that has received an advance may either: (1) Continue to use the structure for which the advance was made as transitional housing under the Program for not less than 10 years from the date of initial occupancy and be under no obligation to repay the advance; (2) obtain a waiver from the Secretary, use the structure for an approved alternate charitable purpose for the remainder of the 10-year period, and be under no obligation to repay the advance; or (3) stop using the structure as transitional housing or discontinue an approved alternate charitable use at any time during the second five-year period from the date of initial occupancy and repay the full amount of the advance in cash and on terms prescribed by the Secretary. For recipients receiving assistance to expand services provided in an existing project or program under paragraph B.3.(i) of this section, above, and the date of initial occupancy under the Program is the date that the expanded services are first provided to the residents of the housing.

All recipients must obtain property casualty insurance with HUD named as beneficiary, in an amount at least equal to the amount of the advance. A recipient whose structure is taken by eminent domain must repay the advance to the extent that the funds are available from the eminent domain proceeding.

A recipient may bring in a successor to continue transitional housing operations or to use the structure for an approved alternate charitable use. The successor is subject to the approval of the Department. Repayment obligations will either remain with the original recipient or will be transferred to the successor, depending upon the terms of HUD's approval.

The duty to provide transitional housing in accordance with the Program's requirements will be incorporated into a grant agreement executed by HUD and the recipient. HUD will enforce these contractual obligations, including the repayment obligation, through actions on the contract. Additionally, restrictions regarding the use of the structure will be contained in covenants that will be recorded with land records in the jurisdiction where the structure is located. These covenants will address (1) restrictions on residents' length of stay; (2) recipients' five-year operation requirement; (3) repayment conditions, if the recipient has received an advance; and (4) resident rent requirements.

3. Resident Rent

Each homeless person residing in transitional housing is required to pay as rent an amount determined in accordance with section 3(a) of the United States Housing Act of 1937. Under this statutory scheme, each resident must pay as rent the highest of (1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child care expenses); (2) 10 percent of the family's monthly income; or (3) if the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated. As part of its technical assistance authority under the Program, HUD will provide successful applicants with detailed information and assistance concerning the calculation of resident rent.

4. Resident Discharge at End of HUD-Approved Residency Period

(i) *Preemption.* No State or local law, ordinance, or regulation shall have any force or effect to the extent that it prohibits, or has the effect of prohibiting, recipients from discharging residents from transitional housing at the end of the HUD-approved limit on the stay of residents in the housing (see paragraph E.1.(i) of this section, above).

(ii) *Resident contract.* The recipient must execute a contract with each resident-individual or family before admission to the housing. The contract must provide that the resident's length of stay in the housing will be limited to a stated time period approved by HUD, and that no State or local law, ordinance, or regulation shall have any force or effect to the extent that it prohibits, or has the effect of prohibiting, the recipient from discharging the resident at the end of this time period. The contract may contain such other terms and conditions governing the relationship between the recipient and the resident as are consistent with these guidelines and agreed upon by the recipient and the resident.

(iii) *Notice of discharge at end of HUD-approved residency period.* Not less than 30 calendar days before the end of the HUD-approved limit on the stay of the resident, the recipient must give the resident written notice that he or she will be discharged from the transitional housing at the end of the residency period, and will not be permitted to remain in the housing after that time. The notice must be personally served on the resident, must state the date of the proposed discharge, and must inform the resident that he or she may request review of the proposed discharge date. Any request for such review must be made not later than 10 calendar days before the end of the residency period, and the review shall be limited to a determination of whether the recipient has calculated the resident's period of residence correctly.

(iv) *Recipient review.* If the resident recipient requests the recipient to review the discharge date contained in the notice, the recipient shall recompute the length of time that the individual or family has been a resident of the transitional housing and compare that period to the HUD-approved limit on residency. If the recipient determines that the discharge date in the notice is too early, the recipient shall withdraw the discharge notice and notify the resident of this action. Notice under this clause shall be in writing and personally served upon the resident not later than five days before the discharge date in the notice of discharge. Withdrawal of a discharge notice under this clause shall not have any effect upon the recipient's service of any subsequent discharge notice on the resident.

5. Funding Amendments and Recaptures

When HUD selects an applicant, it will obligate funds to cover the amount of any acquisition/rehabilitation advance and annual operating costs for up to five years. After the obligation, HUD will make no upward revision to the amount committed for the advance or the annual operating costs.

HUD may deobligate and recapture amounts for the acquisition/rehabilitation advance if the actual total cost of the acquisition/rehabilitation is less than the total cost of the acquisition/rehabilitation anticipated and budgeted in the application. HUD may also reduce the amounts obligated for operating costs in any later year, based on the recipient's actual operating cost experience. Similarly, if a recipient's operations generate a substantial amount of resident rent (as discussed in the preceding paragraph), HUD may adjust the operating costs allowed under the grant agreement downward, to the extent of the rent received in excess of that anticipated and budgeted in the application.

HUD may recapture funds made available under the Program if proposed acquisition/rehabilitation activities are not begun or completed within a reasonable time after selection, or if transitional housing operations are not commenced within a reasonable time following selection. Funds already expended for eligible activities under the Program are generally not subject to recapture. The grant agreement will set forth in detail the circumstances under which funds could otherwise be recaptured and other sanctions could be imposed.

6. Other Federal Requirements

(i) *Nondiscrimination and equal opportunity.* The nondiscrimination and equal opportunity requirements that apply to the Program are discussed below. Notwithstanding the permissibility of proposals that serve designated populations of homeless persons (see paragraph A. of this section, above), a recipient serving a designated population of homeless persons is required, within the designated population, to comply with these requirements for nondiscrimination on the basis of race, color, religion, sex, and national origin.

(a) The requirements of Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794);

(c) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR Chapter 60;

(d) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(e) The requirements of Executive Orders 11625, 12432 and 12138. Consistent with HUD's responsibilities under these Orders, the recipient must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded.

(f) If the procedures that the recipient intends to use to make known the availability of the transitional housing are unlikely to reach persons of any particular race, color, religion, sex, or national origin who may qualify for admission to the housing, the recipient must establish additional procedures that will ensure that these persons are made aware of the availability of transitional housing opportunities.

(ii) *Environmental.* The National Environmental Policy Act of 1969, the related authorities in 24 CFR Part 50, and the Coastal Barriers Resources Act of 1982 (16 U.S.C. 3601) are applicable to proposals under this Program.

(iii) *Applicability of OMB Circulars.* The policies, guidelines, and requirements of OMB Circular Nos. A–87 and A–102 apply to the acceptance and use of assistance under the program by governmental entities, and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations.

(iv) *Lead-based paint.* (a) The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR Part 35 (except as superseded

in paragraph (b), below) apply to the Program.

(b)(1) This paragraph implements the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to structures for which assistance is provided under this Program. This paragraph is promulgated under 24 CFR 35.24(b)(4) and supersedes with respect to the Program, the requirements prescribed in Subpart C of 24 CFR Part 35. The requirements of this paragraph apply to structures that will be occupied by children under seven years of age.

(2) The following definitions are applicable to this paragraph (b).

Applicable surface. All exterior surfaces of a residential structure, up to five feet from the floor or ground, such as a wall, stairs, deck, porch, railing, window, or doors, which are readily accessible to children under seven years of age, and all interior surfaces of a residential structure.

Chewable surface. All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

Defective paint surfaces. Paint on applicable surfaces that is cracking, scaling, chipping, peeling, or loose.

Elevated blood lead level or EBL. Excessive absorption of lead: that is, a confirmed concentration of lead in whole blood of 25 μg/d1 (micrograms of lead per deciliter of whole blood) or greater.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm².

(3) In the case of a structure constructed before 1973, the applicant must inspect the structure for defective paint surfaces before it submits an application. Recipients must inspect assisted structures at least annually during the term of their operating commitment to HUD. If defective paint surfaces are found, treatment in accordance with 24 CFR 35.24(b)(2)(ii) is required. Correction of defective surfaces found during the initial inspection must be completed before initial occupancy of the project. Correction of defective paint conditions discovered at periodic inspection must be completed within 30 days of their discovery. When weather conditions prevent completion of repainting of exterior surfaces within the 30-day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(4) In the case of a structure constructed before 1973, if the recipient is presented with test results that indicate that a child under the age of seven years occupies the structure and has an elevated blood level (EBL) the recipient shall cause the unit to be tested for lead-based paint on chewable surfaces. Testing must be conducted by a State or local health or housing agency, or by an inspector certified by a State or local health or housing agency. Lead content must be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm² or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) is required.

(5) In lieu of the procedures set forth in the preceding clause, the recipient may, at its discretion, abate all interior and exterior chewable surfaces in accordance with the method set out at 24 CFR 35.24(b)(2)(ii).

(6) The recipient must take appropriate action to protect tenants from hazards associated with abatement procedures.

(7) The recipient must keep a copy of each inspection report for at least three years. If a unit requires testing, or treatment of chewable surfaces based on the testing, the recipient must keep the test results indefinitely and, if applicable, the recipient certification of treatment. The records must indicate which chewable surfaces in the units have been tested or treated. If records establish that certain chewable surfaces were tested, or tested and treated, in accordance with the standards prescribed in this Section, these surfaces do not have to be tested or treated at any subsequent time.

(v) *Conflicts of interest.* In addition to conflict of interest requirements in OMB Circular A–102 and A–110, no person: (1) Who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, that receives assistance under the demonstration and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (2) who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

(vi) *Use of debarred, suspended, or ineligible contractors.* The provisions of 24 CFR Part 24 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(vii) *Audit.* The financial management systems used by governmental entities that are recipients under this program must provide for audits in accordance with 24 CFR Part 44. Private nonprofit entity recipients are subject to the audit requirements of OMB Circular A–110. HUD may perform further and additional audits as it finds necessary or appropriate.

(viii) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 and the implementing regulations at 24 CFR Part 52 are not applicable to applicatios under this Program.

(ix) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act (40 U.S.C. 276a–276a–5) do not apply to the Program.

F. Waiver

To ensure flexibility in the administration of the Program, the Secretary of HUD may waive any guideline that is not required by law, if the Secretary determines that good cause for waiver exists. Each waiver must be in writing and supported by documentation of the pertinent facts and grounds.

IV. Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(1)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The OMB numbers is 2502–0361.

The Catalog of Federal Domestic Assistance Program Number is 14.178.

Authority: Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–

591 (approved October 30, 1986), making appropriations as provided for in section 514 of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986); section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 3, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87-13134 Filed 6-8-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF ENERGY

Western Area Power Administration

Trinity River Division, Central Valley Project; Non-Federal Proposal for Financing Study, Development, and Marketing

AGENCIES: Department of the Interior, Bureau of Reclamation; Department of Energy, Western Area Power Administration.

ACTION: Notice of Selection of a Non-Federal Proposal for Financing the Study, Development, and Marketing of the Power from a new Lewiston Powerplant.

SUMMARY: On August 15, 1986, the Bureau of Reclamation (Reclamation) and the Western Area Power Administration (Western) published a **Federal Register** notice (51 FR 29330), hereinafter referred to as the Notice, requesting non-Federal financing proposals to study the feasibility of 600 kilowatts of additional power development at Reclamation's Lewiston Dam (Lewiston) on the Trinity River in norther California, and, if viable, develop and market the power. The Notice also announced a public information/comment forum which was held on September 5, 1986. Three non-Federal financing proposals were received prior to the deadline set forth in the Notice.

After consideration of all of the proposals and the comments, Reclamation and Western have selected the proposal of the Trinity Power Authority.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Conwell, Chief, Energy Resources Branch, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4952, concerning power development matters, or Mr. David Magaw, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, California 95825, (916) 978-4421, concerning power marketing matters.

SUPPLEMENTARY INFORMATION: The three options, under which financing proposals were solicited, were presented in the Notice, and are restated below:

Option A: Loan Arrangement

This option is a loan arrangement between the United States and the entity who loans the money for the financing of the project. The financing entity would receive, in return, repayment of its capital investment plus reasonable costs of financing. No entitlement to power or vested interest in the additional power facilities would be given to the entity. Power generated and transmitted through these facilities would be considered Central Valley Project (CVP) power and used for project use purposes and sales to preference customers.

Option B: Lewiston Allocation

Under this option, the financing entity would receive for its investment an allotment of the additional power generated at Lewiston. The entity would enter into a power sales contract with Western. The cost of such power would be based solely on the operation and maintenance costs of the facility for the term of the contract. The entity would receive its power at Lewiston or some other point of delivery as agreed by Western, the contractor, and any wheeling agent(s) involved.

Option C: CVP Allocation

Under this option, the additional power generated by the new facility would be blended in with existing CVP power, and the financing entity would receive an allotment of CVP power at CVP rates. A billing credit for the entity's investment would be appropriate under this option.

Because the power would be available to the CVP for project use needs and sales to existing preference customers under any Option A proposal, a preference for an Option A proposal was stated in the Notice. In addition, the Notice stated in the section titled "Notice of Call for Comments and Proposals":

> Interested parties are requested to provide Comments and Financing Proposals or submit any other recommended Financing Options by the date and to the address specified in the "Dates and Addresses" section of this notice.

Proposals Received

Three non-Federal financing proposals were submitted. The proposals were submitted by: The City of Palo Alto (CPA); Trinity Power Authority (TPA), a joint powers agency consisting of the County of Trinity, Hayfork Valley Public Utility District, and Trinity County Public Utilities District; and Western Energy Associates, Inc. (WEA), a private entity. Reclamation and Western have made an analysis of the three proposals and discussed the technical aspects of each proposal with the presenting entity. Additional information with respect to the proposals is presented below in the section "Selection of a Proposal."

Discussion of Comments

Summaries of the comments made at the public information/comment forum, the written comment received from the Pacific Gas and Electric Company (PGandE), in its letter of October 7, 1986, and the Federal Agency (Reclamation and Western) responses are as follows:

Comment: Any additional power development at Lewiston will be subject to the first preference provisions of the Trinity River Division, Central Valley Project Act.

Response: We agree and believe this comment is consistent with the provision of the Trinity River Division Act of August 12, 1955 (69 Stat. 719).

Comment: PGandE believes that Western has an obligation to inform potential investors/participants of the transmission risk that may be placed on the participants.

Response: Except for an Option B proposal, where the participant would be responsible for its own transmission arrangements, Western will be responsible for the transmission arrangements. If the Lewiston generation was marketed under an Option B type proposal, the investor/participant would be informed of any transmission risk.

Comment: California Public Utility Commission (CPUC) has issued an interim decision allowing 1,150 MW of available transmission capacity for qualifying facilities (QFs) located in the northern part of the PGandE system. Lewiston is located in this area. The area has QFs which have made applications for over 2,300 MW of transmission capacity. The CPUC has established a "waiting list" and no transmission capacity is available unless a project on the 1,150 MW list drops out. Any potential

interconnection, including Lewiston, must be in accordance with CPUC's procedures.

Response: Noting that a potential power development at Lewiston is listed No. 13 on the "List of Qualifying Facilities within PGandE's Transmission Contained Area that are Eligible under Decision No. 84–08–037," dated March 21, 1986, and the fact that the CPUC has withdrawn Standard Offer No. 4, it would appear that the availability of 600 Kilowatts of transmission capacity may be less than a significant issue. Agreements and arrangements, as necessary, to provide transmission capacity for the additional generation from Lewiston will be effected.

Selection of a Proposal

Of the three financing proposals received, those submitted by TPA and CPA meet the specific terms and conditions required by the financing options set forth in the Notice. Reclamation of Western have characterized the TPA proposal as being under Option A, and the CPA proposal as being under Option C. The third proposal submitted by WEA meets the guidelines set forth in the Notice for proposal submission in that "Interested parties are requested to . . . submit any other recommended Financing Options . . . ." The WEA proposal, in addition to providing financing for the development, requires that ownership be vested in WEA.

The Notice stated, in regard to the financing proposals, that "Constructed facilities would be owned and operated by the United States as a feature of the CVP." Since WEA's proposal does not contemplate Federal ownership, it falls outside of the required criteria for power development at Lewiston and will not be further considered.

A brief overview of the general terms of the proposals by TPA and CPA is presented below.

TPA proposes to make funds available pursuant to the Contributed Funds Act (41 Stat. 1404) for detailed studies, design, and construction of a new Lewiston Powerplant. For its contribution, TPA proposes repayment of its cost of financing and certain other expenses. The repayment contract would be for a period not to exceed 50 years.

The CPA proposal provides for contributed funds up to a fixed amount for feasibility studies and construction of a new Lewiston Powerplant in exchange for a firm allocation of CVP power for a 40-year term. CPA's proposal would also make available additional funds for completion of the plant's construction if the fixed amount proves to be insufficient. However, this additional funding carries a stipulation which would require an additional allocation of CVP power. The CPA also noted (in its proposal) that because of the magnitude of CPA's load factor, a portion of the new Lewiston Powerplant average annual generation would be available for marketing to other CVP power customers.

Although there are certain specifics of the TPA proposal that would require negotiation before a contract could be entered into to consummate this selection, including the repayment of TPA's reasonably incurred costs, Reclamation and Western selected TPA's proposal for the following reasons:

1. TPA's proposal is an Option A proposal. As indicated in the Notice, the Option A proposal is preferable because it would allow the power generated at Lewiston to remain with the CVP for project use needs and be sold to existing preference customers.

2. An economic analysis of the proposals from TPA and CPA, show that TPA's proposal provides the better overall financial package at present; i.e., it is the least cost proposal.

If, within 6 months after the date of this notice of selection, the TPA does not enter into acceptable contracts with Reclamation and Western for the development of the additional power at Lewiston, and if Reclamation and Western do not extend this time period, Reclamation's and Western's acceptance of the TPA's proposal expires. If the acceptance of TPA's proposal expires, Reclamation and Western will announce the selection of the CPA proposal. The CPA will then be subject to these same time conditions for entering into acceptable contracts.

National Environmental Policy Act

Reclamation and Western are required to conduct an environmental evaluation of certain actions in compliance with the National Environmental Policy Act (NEPA) of 1969. Pursuant to section 102(2)(C) of NEPA and the Department of Energy regulations published in the Federal Register at 45 FR 20694, as amended, Reclamation and Western will make an evaluation and determination of the possible environmental impacts of the proposal. No decision to go forward with the construction and operation of the project will be made until appropriate NEPA documentation is completed and found acceptable.

Availability of Information

Brochures, studies, comments, letters, memorandums, and other documents made or kept by Reclamation or Western pursuant to this notice may be made available for inspection and copying at their respective offices stated above.

Dated: June 3, 1987.

C. Dale Duvall,

Commissioner, Bureau of Reclamation.

Dated: April 14, 1987.

William H. Clagett,

Administrator, Western Area Power Administration.

[FR Doc. 87–13045 Filed 6–8–87; 8:45 am]

BILLING CODE 4310–09–M

Bureau of Land Management

[CA–940–07–5410–10]

Realty Action; Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Conveyance of the Reserved Mineral Interest.

SUMMARY: The private lands described in this notice will be examined for suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interests will be conveyed in whole or in part upon favorable mineral examination.

Serial No.	Legal description	Acres	County	Reservation
CA 20061	T. 14 N., R. 6 W., MD Mer Sec. 19, Lot 2, Lot 3, Lot 4 except M&B. T. 14 N., R. 7 W., MD Mer. Sec. 24, SE¼ NE¼ except M&B.	158.13±	Lake	100% all minerals.

The purpose is to allow consolidation of surface and subsurface or minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

Upon publication of this notice of realty action in the **Federal Register** as provided in 43 CFR 2720.1–(b), the mineral interests owned by the United States in the private land conveyed by the application shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance to such mineral interest, upon final rejection of the application or two years from the date of filing of the application, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Joan Mangold, BLM California State Office, 2800 Cottage Way, Room E–2841, Federal Office Building, Sacramento, California 95825 (916) 978–4815.

Dated: June 1, 1987.

Nancy J. Alex,

Chief, Lands Section, Branch of Adjudication & Records.

[FR Doc. 87–13031 Filed 6–8–87; 8:45 am]

BILLING CODE 4310–10–M

[OR–36236; OR–943–07–4220–10: GP–07–206]

Oregon; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 5.00 acres of public land for the John Day Administrative Site. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received by September 8, 1987.

ADDRESS: Comments and meeting requests should be sent to: Oregon State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, 503–231–6905.

On May 26, 1987, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

Willamette Meridian

John Day Administrative Site

T. 16 S., R. 27 E.,

Sec. 29, S½SE¼SW¼NW¼.

The area described contains 5.00 acres in Grant County.

The purpose of the proposed withdrawal is to protect the John Day Administrative Site which is located on the South Fork John Day River approximately 25 miles south of Dayville, Oregon.

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 proposal withdrawal may present their views in writing to the Oregon State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Oregon State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are leases, licenses, permits, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: May 29, 1987.

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–13140 Filed 6–8–87; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Reclamation

Colorado River Floodway Task Force; Meeting

SUMMARY: The Colorado River Floodway Protection Act, Pub. L. 99–450, requires the Secretary of the Interior to establish a federally declared floodway along the Colorado River below Davis Dam on the Arizona/Nevada border and the southerly international border between the United States and Mexico. The Act requires that a task force be established to assist in the development of the floodway boundaries. The Task Force report is required to be filed with the Congress 9 months from the October 8, 1986, enactment of Pub. L. 99–450.

Open meetings will be held as described below:

Dates: June 30, 1987.

Time: 10 a.m.

Address: Holiday Inn, 245 London Bridge Road, Lake Havasu City, Arizona 86403, (602) 855–4071.

FOR FURTHER INFORMATION CONTACT: Robert Brose, Bureau of Reclamation, Nevada Highway and Park Street, P.O. Box 427, Boulder City, Nevada 89005, (702) 293–8520.

Dated: June 3, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87–13055 Filed 6–8–87; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Notice of Intention To Negotiate Concession Contract; Extend Due Date for Proposals; International Leisure Hosts, Ltd.

Public notice was given on April 16, 1987, that ninety (90) days thereafter the Department of Interior, through the Director of the National Park Service proposes to negotiate a concessions contract with International Leisure Hosts, Ltd., authorizing it to continue to provide lodging, food, retail merchandising, and gasoline facilties and services for the public at John D. Rockefeller, Jr., Memorial Parkway, Wyoming. The Secretary has amended the Statement of Requirements for that concession contract and in order to give interested parties an opportunity to take the amendment into account when making proposals, the date on which proposals must be postmarked or hand delivered is extended thirty (30) days from July 16, 1987, to August 17, 1987.

Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225 for information as to the amended requirements of the proposed contract.

Dated: June 3, 1987.

Jack W. Neckels,

Acting Regional Director, Rocky Mountain Region.

[FR Doc. 87–13064 Filed 6–8–87; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were recieved by the National Park Service before May 29, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 24, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Tuscaloosa County

Tuscaloosa, *Fitch House* 3404 Sixth St.

ALASKA

Ketchikan Gateway

Ketchikan, *Ayson Hotel,* 301–305 Stedman St.

ARKANSAS

Newton County

Erbie, *Parker-Hickman Farm Historic District,* Buffalo National River

ILLINOIS

Cook County

Chicago, *Building at 257 Delaware Street,* 257 Delaware St.

INDIANA

Monroe County

Bloomington, *Princess Theatre Building (Boundary Decrease),* 206 N. Walnut St.

KANSAS

Douglas County

Lawrence, *Achning, Ralph and Cloyd, House,* 846 Missouri St.

MARYLAND

Prince George's County

Croom vicinity, *Brookefield of the Berrys,* 12510 Molly Berry Rd.

Largo, *Mount Lubentia,* 603 Largo Rd.

MASSACHUSETTS

Worcester County

Lunenburg, *Lunenburg Historic District,* Leominster Rd., Highland St., Oak and Massachusetts Aves., Main St., and Lancaster Ave.

MICHIGAN

Wayne County

Gross Pointe Farms, *Academy of the Sacred Heart.* 171 Lake Shore Dr.

NEW YORK

Dutchess County

Rhinebeck, *Astor Home for Children (Rhinebeck Town MRA),* 36 Mill St.

Rhinebeck, *Barringer Farmhouse (Rhinebeck Town MRA),* US 9

Rhinebeck, *Benner House (Rhinebeck Town MRA),* 77 Mill St.

Rhinebeck, *Cox Farmhouse (Rhinebeck Town MRA),* Old Post Rd., N.

Rhinebeck, *Evergreen Lands (Rhinebeck Town MRA),* Delano Dr.

Rhinebeck, *Fredenburg House (Rhinebeck Town MRA),* Old Post Rd.

Rhinebeck, *Free Church Parsonage (Rhinebeck Town MRA),* Jct. of William and Grinnell Sts.

Rhinebeck, *Grosmere (Rhinebeck Town MRA),* Mill Rd.

Rhinebeck, *Grove, The (Rhinebeck Town MRA),* Jct. of Miller Rd. and NY 308

Rhinebeck, *Heermance House and Law Offices (Rhinebeck Town MRA),* Jct. of Rhinecliff and Long Dock Rds.

Rhinebeck, *Hillside Methodist Church (Rhinebeck Town MRA),* US 9

Rhinebeck, *Mansakenning (Rhinebeck Town MRA),* Ackert Hook Rd.

Rhinebeck, *Maples The (Rhinebeck Town MRA),* 108 Montgomery St.

Rhinebeck, *Marquardt Farm (Rhinebeck Town MRA),* Wurtemburg Rd.

Rhinebeck, *Moore, J. W. House (Rhinebeck Town MRA),* Mill Rd.

Rhinebeck, *Morton Memorial Library (Rhinebeck Town MRA),* Kelly St.

Rhinebeck, *O'Brien General Store and Post Office (Rhinebeck Town MRA),* Jct. of Schatzell Ave. and Charles St.

Rhinebeck, *Pier, Jan, House (Rhinebeck Town MRA),* NY 308

Rhinebeck, *Progue House (Rhinebeck Town MRA),* Primrose Hill Rd.

Rhinebeck, *Pultz Farmhouse (Rhinebeck Town MRA),* Wurtemburg Rd.

Rhinebeck, *Rhinecliff Hotel (Rhinebeck Town MRA),* Schatzell Ave.

Rhinebeck, *Riverside Methodist Church and Parsonage (Rhinebeck Town MRA),* Charles and Orchard Sts.

Rhinebeck, *Salisbury Turnpike Bridge (Rhinebeck Town MRA),* Old Turnpike Rd.

Rhinebeck, *Sipperly Lown Farmhouse (Rhinebeck Town MRA),* US 9

Rhinebeck, *Slate Quarry Road Dutch Barn (Rhinebeck Town MRA),* Slate Quarry Rd.

Rhinebeck, *St. Paul's Lutheran Church, Parsonage and Cemetary (Rhinebeck Town MRA),* Wurtemburg Rd.

Rhinebeck, *Steenburg Tavern (Rhinebeck Town MRA),* US 9

Rhinebeck, *Stonecrest (Rhinebeck Town MRA),* Old Post Rd.

Rhinebeck, *Strawberry Hill (Rhinebeck Town MRA),* Ackert Hook Rd.

Rhinebeck, *Traver House (Rhinebeck Town MRA),* Wynkoop Lane

Rhinebeck, *Traver, J. E., Farm (Rhinebeck Town MRA),* Violet Hill Rd.

Rhinebeck, *Traver, John H., Farm (Rhinebeck Town MRA),* Wurtemburg Rd.

Rhinebeck, *Van Vredenburg Farm (Rhinebeck Town MRA),* Cedar Heights Rd.

Rhinebeck, *Williams Farm (Rhinebeck Town MRA),* Enterprise Rd.

NORTH CAROLINA

Alamance County

Bellemont, *Bellemont Mill Village Historic District,* E and W side of NC 49, S of Jct. with Great Alamance Creek

OREGON

Baker County

Sumpter, *Sumpter Valley Railway Historic District,* Roughly between Baker and Prairie City starting near the McEwen station site and W to the Dixie Pass area

Grant County

Bates vicinity, *Sumpter Valley Railway, Middle Fork-John Day River, Spur,* Sumpter Valley Railway's Middle Fork Spur between Bates and Susanville Oregon

RHODE ISLAND

Kent County

Coventry, *South Main Street Historic District,* Cady, S. Main, and Wood Sts.

SOUTH DAKOTA

Bon Homme County

Tabor vicinity, *Frydrych, John, Farmstead (Czech Folk Architecture of Southeastern South Dakota MRA),* N side SD 50

Tabor vicinity, *Hakl, John, Chalkrock House (Czech Folk Architecture of Southeastern South Dakota MRA),* SW of Tabor off SD 50

Tabor vicinity, *Herman, Joseph, Chalkrock House (Czech Folk Architecture of Southeastern South Dakota MRA),* W side SD 25

Tabor vicinity, *Herman, Joseph, Log Stable (Czech Folk Architecture of Southeastern South Dakota MRA),* W side SD 25

Tabor vicinity, *Herman, Joseph, Rubblestone Barn (Czech Folk Architecture of Southeastern South Dakota MRA),* W side SD 25

Tabor vicinity, *Honner, Martin, Chalkrock House (Czech Folk Architecture of Southeastern South Dakota MRA),* NW of Tabor off SD 50

Tabor vicinity, *Merkwan, John Jr., Rubblestone House (Czech Folk Architecture of Southeastern South Dakota MRA),* W side SD 25

Tabor vicinity, *Merkwan, John and Kate, Log and Rubblestone House (Czech Folk Architecture of Southeastern South Dakota MRA),* E side SD 25

Tabor vicinity, *Merkwan, John and Kate, Rubblestone House-Barn (Czech Folk Architecture of Southeastern South Dakota MRA),* E side SD 25

Tabor vicinity, *Noll, Joseph, Chalkrock Barn (Czech Folk Architecture of Southeastern South Dakota MRA),* S of Tabor off SD 50

Tabor vicinity, *Sedlacek, Jacob, Chalkrock House (Czech Folk Architecture of Southeastern South Dakota MRA),* SW of Tabor off SD 50

Tabor vicinity, *Teibel-Sykora Rubblestone Barn (Czech Folk Architecture of Southeastern South Dakota MRA),* W side SD 25

Tabor vicinity, *Travnicek, John Chalkrock House (Czech Folk Architecture of*

Southeastern South Dakota MRA), NW side jct. of SD 50 and SD 25
Tabor vicinity, *Walker, Albion, Chalkrock House (Czech Folk Architecture of Southeastern South Dakota MRA)*, S of SD 52

Yankton County

Tabor vicinity, *Merkwan, Mathias, Rubblestone Barn (Czech Folk Architecture of Southeastern South Dakota MRA)*, E of Tabor
Tabor vicinity, *Pechan, Frantisek, Log House (Czech Folk Architecture of Southeastern South Dakota MRA)*, N of SD 50 and 52
Tabor vicinity, *Svatos, Frank, Rubblestone Barn (Czech Folk Architecture of Southeastern South Dakota MRA)*, SE of Tabor off SD 50

TENNESSEE

Bedford County

Normandy, *Landis, Absalom Lowe, House*, Thompson's Creek Rd.

Cannon County

Woodbury, *Baptist Female College—Adams House*, 210 S. College St.

DeKalb County

Liberty, *Liberty Historic District*, Roughly along Main and N. Main Sts.

Hardeman County

Bolivar, *Western State Hospital Historic District*, US 64

Knox County

Knoxville, *Ebenezer Mill*, Ebenezer Rd.

Perry County

Linden vicinity, *Hufstedler Gravehouse*, Hurricane Creek Rd.

Sullivan County

Bristol, *Bristol Municpal Stadium*, 1112 Edgemont Ave.

Sumner County

Castalian Springs vicinity, *Parker—Bryson Historic District*, Greenfield Lane

WEST VIRGINIA

Braxton County

Sutton, *Sutton Downtown Historic District*, Roughly bounded by Main St., River View Dr., and First St.

WISCONSIN

Dane County

Madison, *Simeon Mills Historic District*, 102—118 King St. and 115—123 E. Main St.

Winnebago County

Nekimi, *Black Oak School*, 5028 S. Green Bay Rd.

[FR Doc. 87-13065 Filed 6-8-87; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: 30 CFR Part 783, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.

Abstract: Sections 507 and 508 of Pub. L. 95-87 require applicants for underground coal mining permits to provide adequate descriptions of the premining environmental resources and cultural, historic, and archeological values existing within the proposed permit area and adjacent areas. This information is used by the regulatory authority to determine whether the applicant can comply with the environmental protection performance standards for underground mining.

Bureau Form Number: None.
Frequency: On occasion.
Description of Respondents: Coal Mine Operators.
Annual Responses: 500.
Annual Burden Hours: 25,516.
Bureau Clearance Officer: Darlene Grose Boyd, 202-343-5447.

Dated: May 26, 1987.

Carson W. Culp,

Assistant Director, Budget and Administration.

[FR Doc. 87-13032 Filed 6-8-87; 8:45 am]
BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-10 (Sub-42)]

Norfolk & Western Railway Co.; Abandonment and Discontinuance of Service Between Linden, IN and Coffeen, IL; Findings

The Commission has found that the present and future public convenience and necessity permit the Norfolk and Western Railway Company to (a) abandon its 131.45-mile rail line between Linden, IN (milepost 231.2) and Cowden, IL (milespost 363.65); and (b) discontinue service over its adjacent 31.65-mile line between Cowden and Coffeen, IL (milespost 394.3). The abandonment and discontinuance certificate will be issued 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered fianancial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelop containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: June 2, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons dissented with a separate expression. Commissioner Sterrett did no participate.

Noreta R. McGee,

Secretary.

[FR Doc. 87-13054 Filed 6-8-87; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31049]

Panther Valley Railroad Corp.; Modified Rail Certificate

On May 8, 1987, a notice was filed by the Panther Valley Railroad Corp. (PVRC) for a modified certificate of public convenience and necessity under 49 CFR 1150.23. PVRC is authorized to operate a 7.4-mile line of railroad known as the Catawissa Branch and a 9.9-mile line of railroad known as the Shimer

Running Track, both in Pennsylvania. The Catawissa Branch extends from East Mahoney Junction (milepost 103.0) to Lofty (milepost 110.4), and the Shimer Running Track extends from York Junction (milepost 148.3) to Delano (milepost 158.2).

The Catawissa Branch was abandoned by the Reading Company in 1976 pursuant to the Regional Rail Reorganization Act of 1973, 45 U.S.C. 748(b), and was not conveyed to the Consolidated Rail Corporation (Conrail). *See* I USRA, *Final System Plan*, at 453–4 and *Errata Supplement*, at 57. The line was subsequently acquired by the Schuylkill County Rail Transport Authority (SCRTA), a public agency in the Commonwealth of Pennsylvania. The Shimer Running Track was abandoned by Conrail pursuant to a decision of the Commission in Docket No. AB–167 (Sub-No. 397N), *Conrail Abandonment Between York Jct. and Delano, PA* (not printed), served June 8, 1983, and subsequently was acquired by SCRTA in 1985.

PVRC will operate these lines for an initial 5-year period pursuant to an operating agreement with SCRTA.

This notice must be served on the Association of American Railroads (Car Service Division) as agency of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: June 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–13056 Filed 6–8–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements 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 Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements 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 N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration

Notice of Controversion of Right to Compensation
1215–0023; LS–207
On occasion
Businesses or other for-profit
900 responses; 4,725 hours; 1 form
Form is used by insurance carriers and self-insured employers to controvert claims under the Longshore Act and extensions

Certification of Funeral Expenses
1215–0027; LS–265
On occasion
Businesses or other for-profit; small businesses or organizations
195 responses; 49 hours; 1 form
Form is used to report funeral expenses under the Longshore Act and extension

Employment and Training Administration

Characteristics of the Insured Unemployed
1205–0009; ES 203
Quarterly
State or local governments
53 respondents; 106 burden hours; 1 form

This report is the only source of current, consistent, demographic information on the UI claimant population. The age, sex, race/ethnic, industry, and occupation variables identify important claimant cohorts for legislative, economic, and social planning purposes and evaluation of the UI program on the Federal and State levels.

Statement from Courts or other Agency; Statement from Institutions; Recommendation for Job Corps
1205–0026; ETA 655, 655A, 655B
On occasion
State or local governments; Businesses or other for-profit; Non-profit institutions
15,400 respondents; 6,545 burden hours; 3 forms

These forms are an essential part of the screening and admissions process for Job Corps. It is especially true due to the residential nature of the program, where behavioral problems can pose a danger to other enrollees. The information collected is critical in determining whether or not an applicant should be enrolled.

Weekly Claims and Extended Benefits Data
1205–0028; ETA 539
Weekly
State or local governments
53 respondents; 4,221 burden hours; 1 form

Data for the determination of the beginning, continuance, or termination of an extended benefit period in any State by reason of the EB trigger rate. Also data on initial and continued claims used as economic indicators.

Mine Safety and Health Administration

Maintenance of Independent Contractor Register

1219–0040
On occasion
Businesses or other for profit; small businesses or organizations
16,427 respondents; 14,233 hours

Requires mine operators to maintain a register of independent contractors working at the mine. The information is used by MSHA during inspections to determine proper responsibility for compliance with safety and health standards.

Identification of Independent Contractors
1219–0043
Other: Upon application for MSHA ID number
Businesses or other for profit; small businesses or organizations
685 responses; 112 hours

Provides that independent contractors may voluntarily obtain a permanent MSHA identification number by submitting to MSHA their trade name and business address, a telephone number, an estimate of the annual hours worked by the contractor on mine property for the previous calendar year, and the address of record for the service of documents upon the contractor.

Training for Mine Rescue Teams
1219–0077
Monthly
Businesses or other for profit; small businesses or organizations
800 responses; 1,800 hours

Requires records to be kept on file at the mine rescue station of the mandatory training received by each mine rescue team member.

First Aid Training for Supervisory Employees
1219–0085
On occasion
Businesses or other for profit; small businesses or organizations
5,024 respondents; 2,512 hours

Requires coal mine operators to keep records of first aid training received by supervisory employees.

Notification of Commencement of Operations and Closings of Mine
1219–0092
On occasion
Businesses or other for profit; small businesses or organizations
3,330 responses; 417 hours

Requires operators of metal and nonmetal mines to notify MSHA of openings and closings of mines.

Mine Rescue Equipment Test and Inspection Records
1219–0093
Monthly
Businesses or other for profit; small businesses or organizations
800 respondents; 24,000 hours

Records of the results of tests and examinations of mine rescue equipment are required to be maintained at mine rescue stations.

Occupational Safety and Health Administration

Concrete, Concrete Forms, and Shoring Recordkeeping
Businesses or Other Profit, Small Businesses or Organizations
70,000 Responses; 11,667 hours

Construction firms engaged in erection of concrete formwork are required to have a copy of the formwork plans or drawings available. The plans or drawings are necessary to provide detailed specifications and instructions for erecting the formwork. Failure to follow the plans or drawings may result in a formwork collapse.

Departmental Management

Disclosure of Information to Credit Reporting Agencies, Administrative Offset, Interest, Penalties and Administrative Costs
1225–0030
On occasion
Individuals or households; farms; Businesses or other for profit; Federal agencies or employees; non-profit institutions; small businesses or organizations
7,000 responses; 12,250 hours

Information will be collection from debtors to assist in determining whether an individual or organization is actually indebted to the Department of Labor, and if so indebted, to evaluate the individual's or organizations ability to repay the debt.

Bureau of Labor Statistics

CES Response Analysis Survey
1220–0089; BLS/790/RAS–T
One-time Survey
Businesses or other for profit; State or local governments, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
1,120 responses; 224 hours, 1 form

The BLS program collects monthly employment, hours, and earning data from over 280,000 private non-farm establishments and is one of the nation's leading indicators of the health of the economy. Through periodic review of a firms payroll recordkeeping process, available data sources can be better matched with survey definitions resulting in improved data quality.

Pension and Welfare Benefits Administration

Prohibited Transaction Class Exemption 84–24—Replacement for 77–9
On occasion
Business and other for profit; small businesses or organizations 65,000 responses; 16,250 hours

The class exemption allows insurance agents and brokers, pension consultants, insurance companies, investment companies and investment company principal underwriters who are parties in interest for a plan to sell insurance and annuity contracts and neutral funds of companies they represent to the plan. The amendment extends the exemption to affiliates.

Prohibited Transaction Class Exemption 86–1
On occasion
Business or other for-profit; 21,600 responses; 1,800 hours

The class exemption allows banks and registered broker-dealers to borrow securities that are assets of employee benefit plans.

Signed at Washington, DC, this 4th day of June, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87–13125 Filed 6–8–87; 8:45 am]

BILLING CODE 4510–43–M

Office of the Assistant Secretary

Committee on Veteran's Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, Title III, Pub. L. 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Thursday, June 25, 1987, at 2:00 p.m., in the Secretarys' Conference Room, S–2508, FPB.

Items to be discussed are:

- Office of Personnel Management Presentation
- Validity Generalization Survey Results
- Disabled Veteran Hiring Project Upate
- Public Information Grant Update

The public is invited.

Signed at Washington, DC this 2nd day of June, 1987.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 87–13131 Filed 6–8–87; 8:45 am]

BILLING CODE 4510–79–M

Employment and Training Administration

[TA-W-19,576]

Asher Pants Co.; Fitchberg, MA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 27, 1987 in response to a worker petition received on April 27, 1987 which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers at Asher Pants Company, Fitchberg, Massachusetts. The workers produced men's and boys' pants.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation

Signed at Washington, DC, this 28th day of May 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-13126 Filed 6-8-87; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; AT&T Information Systems et al

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The pupose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 11, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than, June 19, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 26th day of May 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/Workers/Firm—	Location	Date Received	Date of Petition	Petition No.	Articles produced
AT&T Information Systems (IBEW)	Little Rock, AR	5/26/87	5/14/87	19, 720	Computers.
Amoco (Workers)	Lafayett, LA	5/26/87	5/14/87	19, 721	Oil and gas.
Atlantic Richfield (Workers)	Lafayette, LA	5/26/87	5/14/87	19, 722	Oil and gas.
Cobble Muse Hosiery (Workers)	Chattanooga, TN	5/26/87	4/24/87	19, 723	Socks.
Crescent Petroleum Corp. (Company)	Corpus Christi, TX	5/26/87	5/14/87	19, 724	Crude Oil.
Inmos Corp. (Workers)	Colorado Springs, CO	5/26/87	5/15/87	19, 725	Computers.
Flowline Corporation-Perry Forge Division (Workers)	New Castle, PA	5/26/87	5/13/87	19, 726	Pipe.
GTE Government Systems (Workers)	Tempe, AZ	5/26/87	4/29/87	19, 727	Communication equipment.
GTE Laboratories, Inc. (Workers)	Waltham, MA	5/26/87	4/29/87	19, 728	Communication equipment.
GTE Microcircuits (Workers)	Tempe, AZ	5/26/87	4/29/87	19, 729	Microcircuits.
Luther Hendon, Inc. (company)	Beaumont, TX	5/26/87	5/11/87	19, 730	Vacuum trucks.
Major Watchcase, Co. (AFL-CIO)	Brooklyn, NY	5/26/87	4/21/87	19, 731	Watchcases.
Metal Carbides, Inc (USW)	Youngstown, OH	5/26/87	5/13/87	19, 732	Cemented carbides.
Middlesex MFG Co., Inc. (company	Everett, MA	5/26/87	5/11/87	19, 733	Girls' pants and skirts.
Mobil Exploration & Producing (workers)	Lafayette, LA	5/26/87	5/1/87	19, 734	Oil and gas.
Mobil Producing Texas & New Mexico (workers)	The Woodlands, TX	5/26/87	5/12/87	19, 735	Crude oil.
Momentum Manufacturing Corp. (workers)	Herkimer, NY	5/26/87	5/18/87	19, 736	Computers.
Multi-Repairs Inc. (U.M.W.A.)	Summersville, WV	5/26/87	5/15/87	19, 737	Metallurgical coal.
Oscar Mayer Foods Corp. (U.F.C.W.)	Beardstown, IL	5/26/87	5/15/87	19, 738	Meats.
Pollymer Corp. (workers)	Reading, PA	5/26/87	5/5/87	19, 739	Industrial plastics.
Racine Steel Castings (UAW)	Racine, WI	5/26/87	5/15/87	19, 740	Steel castings.
Retour, Inc. (company)	Mansfield, PA	5/26/87	5/5/87	19, 741	Ferrite.
S.I.T.C.O. (IUE)	San Antonio, TX	5/26/87	5/8/87	19, 742	Beverage dispensing equipment.
Seasons Best (ILGWU)	New York, NY	5/26/87	5/11/87	19, 743	Ladies' sportswear.
Scully Leatherwear, (ACTWU)	Los Angeles, CA	5/26/87	5/13/87	19, 744	Leather apparel.
Sprague Electric, Co. (workers)	Wichita Falls, TX	5/26/87	4/13/87	19, 745	Computers.
Toyad Corp. (URW)	Latrobe, PA	5/26/87	5/13/87	19, 746	Roofing insulation.
Tamarack Petroleum (workers)	Midland, TX	5/26/87	5/13/87	19, 747	Oil and gas.
Vesta Manufacturing, Corp. (workers)	Sweetwater, TN	5/26/87	5/13/87	19, 748	Iron and steel.
Westinghouse Electric Corp. (IUE)	East Pittsburgh, PA	5/26/87	5/26/87	19, 749	Generators.
Wilker Bros Co., Inc. (workers)	McKenzie, TN	5/26/87	5/12/87	19, 750	Sleepwear.
Clark Brothers Bolt Co., Inc. (company)	Milldale, CT	5/26/87	5/14/87	19, 751	Fasteners.
DCC Inc. (workers)	Miami, FL	5/26/87	5/19/87	19, 752	Apparel.
Earmark, Inc. (workers)	Hamden, CT	5/26/87	5/14/87	19, 753	Communication equipment.
Henry Richards Co, Inc. (International Leather Goods)	New Haven, CT	5/26/87	5/19/87	19, 754	Handbags.
Trade Corp. (workers)	Huntington, Valley, PA	5/26/87	5/11/87	19, 755	Lead frames.
Schlumberger Palo Alto Research (workers)	Palo Alto, CA	5/26/87	4/15/87	19, 756	Semiconductors.
DeNovo Oil & Gas, Inc. (workers)	Houston, TX	5/26/87	5/11/87	19, 757	Crude oil.

[FR Doc. 87-13127 Filed 6-8-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19, 167]

Crown Creative Industries Greensburgh, PA; Affirmed Determination Regarding Application for Reconsideration

By an application dated May 12, 1987, the United Electrical Radio and Machine Workers of America (UE) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of Crown Creative Industries, Greensburg, Pennslyvania. The determination was published in the Federal Register on May 12, 1987 (52 FR 17852).

The union claims, among other things, that the production of lamps and shades formerly produced at Greensburg in 1986 are now being imported by the company from the Orient.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 28th day of May 1987.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 87-13129 Filed 6-8-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,172]

El Paso Hydrocarbons Co.; Odessa, TX; Negative Determination Regarding Application for Reconsideration

By an application dated April 14, 1987, one of the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at the Odessa Office of El Paso Hydrocarbons Company, Odessa, Texas. The denial notice was signed on March 16, 1987 and published in the Federal Register on April 17, 1987 (52 FR 12622).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claims that the certifications for workers at Mitchell Energy Corporation (MEC), and Cities Service Oil and Gas Corporation should be used as precedents for this reconsideration.

Findings in the investigation show that El Paso Hydrocarbons refines and transports by pipeline liquid natural gas products. According to company officials, El Paso Hydrocarbons has decreased sales because the energy industry sales including natural gas liquids decreased in 1986 compared to 1985.

Administrative and support workers at the Odessa, Texas Office do not quality for adjustment assistance since production workers at El Paso Hydrocarbons are not currently under a certification for adjustment assistance. Service workers may become eligible for benefits if the reducation in demand for their services is determined to have originated at a production facility related to the workers' firm by ownership, whose workers independently meet the statutory criteria for cerfication. The reduction in demand for services must directly relate to the products adversely affected by increased imports.

The Department's files show that MEC and Cities Service are mainly crude oil producers and are independent from El Paso Hydrocarbons, a producer of liquid natural gas products. Workers at MEC and Cities Service met the statutory criteria of section 222 of the Trade Act of 1974 in the time period applicable to their petitions while workers at the Odessa office of El Paso Hydrocarbons did not.

The functions of the Odessa office were domestically transferred to Meridian Oil, an affiliate company in Houston, Texas. Production workers at neither Meridian Oil Company nor El Paso Hydrocarbons are currently certified for trade adjustment assistance.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 29th day of May, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-13130 Filed 6-8-87; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-52]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by June 19, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Ray S. Mayfield, NASA Agency Clearance Officer, Code NM, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453-1090.

Reports

Title: NASA Safety Reporting System (NSRS).
Type of Request: New.
Frequency of Report: AR.
Type of Respondent: Individuals or households, businesses or other for-profit, federal agencies or employees.

Annual Responses: 10.
Annual Burden Hours: 10.

Abstract-Need/Uses: Form will be used by NASA employees and NASA contractor employees to voluntarily and confidentially report to an independent agency any safety concerns or hazards pertaining to the National Space Transportation System (NSTS).

Ray S. Mayfield,

Director, Management Analysis Office.

June 3, 1987.

[FR Doc. 87-13036 Filed 6-8-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming. (202) 357-9520.

OMB Desk Officer: Susan Dudley, (202) 395-3084.

Title: Reviewer Background Information.

Affected Public: Individuals.

Number of Responses: 15,000 responses; total of 1,750 burden hours.

Abstract: The National Science Foundation regularly solicits and receives proposals from colleges, universities, and nonprofit organizations throughout the U.S. Whether processing proposals on an individual basis or in large blocks, the staff relies heavily on a merit review system both in identification of meritorious project and in providing the sound basis for project restructuring. This background information is maintained for reviewer selection.

Dated: June 4, 1987.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 87-13133 Filed 6-8-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Dockets 50-254/265]

Commonwealth Edison Co.; Quad Cities Station; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for the Commonwealth Edison Company's Quad Cities Station from the Moline Public Library, Moline, Illinois, to the Dixon Public Library, Dixon, Illinois.

Members of the public may now inspect and copy documents and correspondence related to the licensing and operation of the Quad Cities Station at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021. The Library hours are:

Monday-Thursday 10 a.m.—9 p.m.
Friday 10 a.m.—6 p.m.
Saturday 10 a.m.—5 p.m.

For further information, interested parties in the Dixon area may contact the LPDR directly through Ms. Nancy Gilfallen, telephone number 815-284-7261. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room, 1717 H Street, NW., Washington, DC 20555, telephone number 202-634-3273.

Questions concerning the NRC's local public document room program or the availability of documents at the Quad Cities LPDR should be addressed to Ms. Jona L. Souder, Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone number 800-638-8081 toll-free.

Dated at Bethesda, Maryland, the 3rd day of June 1987.

For the Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration and Resources Management.

[FR Doc. 87-13136 Filed 6-8-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana and Michigan Electric Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Indiana and Michigan Electric Company for withdrawal of an application for amendment to Facility Operating License Nos. DPR-58 and DPR-74 for the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, located in Berrien County, Michigan. The Commission issued a notice of consideration of issuance of amendment which was published in the **Federal Register** on February 12, 1986 (51 FR 5274). The amendment would have revised the Technical Specifications by adding a provision to allow two-plant operation with three out of four Essential Service Water (ESW) pumps operational and the two plants' ESW systems aligned in the cross-tie mode. By letter dated May 15, 1987, the licensee withdrew its application for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated January 17, 1986, (2) the licensee's letter dated May 15, 1987 withdrawing the application for amendment, and (3) the Commission's letter granted the withdrawal dated June 2, 1987. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Bethesda, Maryland, this 2nd day of June, 1987.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Project Manager, Project Directorate III-3, Division of Reactor Projects.

[FR Doc. 87-13137 Filed 6-8-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Company, et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 117 to Facility Operating License No. DPR-65, to Northeast Nuclear Energy Company, The Connecticut Light and Power Company, and Western Massachusetts Electric Company, which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 2, located in the Town of Waterford, Connecticut. The amendment was effective as of the date of its issuance.

The amendment provides changes to the Technical Specifications which allow storage of consolidated fuel in the spent fuel pool. In addition, since storage of consolidated spent fuel allows eventual removal of spent fuel storage cell blocking devices, this amendment increased the spent fuel storage authorization from 1112 to 1346 fuel assemblies. It should be noted that this amendment limits spent fuel consolidation to the demonstration phase during which ten (10) spent fuel assemblies will be consolidated into five (5) canisters. The NRC staff is continuing to review the issues associated with full scale consolidation of spent fuel.

The application for the amendment complies with the standards and

requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the Federal Register on July 28, 1986 (51 FR 26961). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted because there will be no environmental impact attributed to the action beyond that which has been predicted and described in the Commission's Final Environmental Statement for the facility dated June 1983.

For further details with respect to this action, see (1) the application for amendment dated May 21, 1986, as supplemented by letter dated May 27, 1987, (2) Amendment No. 117 to Facility Operating License No. DPR-65, and (3) the Environmental Assessment and Finding of No Significant Impact (52 FR 20477). All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Bethesda, Maryland, this 2nd day of June, 1987.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Project Manager, Project Directorate I-4, Division of Reactor Projects I/II.

[FR Doc. 87-13138 Filed 6-8-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on June 24, 1987, 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:

Wednesday, June 24, 1987—8:30 A.M. Until the Conclusion of Business

The Subcommittee will review SECY 87-101, "Issues and Proposed Options Concerning Degree Requirement for Senior Operators."

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 durng 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 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. Herman Alderman (telephone 202/634-3297) 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: June 3, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87-13097 Filed 6-8-87; 8:45 am]

BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Subcommittee on Diagnostic and Therapeutic Practices and Subcommittee on Hospital Productivity and Cost Effectiveness; Meetings

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Wednesday, June 24, 1987, at the Hyatt Regency Crystal City at Washington National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in Potomac III & IV Rooms at 9:15 a.m. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene their meeting at 9:15 a.m in the Fairfax Room. The full commission will convene its meeting at 10:30 a.m. in Potomac V & VI rooms.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 87-12956 Filed 6-8-87; 8:45 am]

BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 4, 1987.

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:

Excel Industries
Common Stock, No Par Value (File No. 7-0202)
Reich & Tang L.P.
Limited Partnership Units (File No. 7-0203)
Washington Home Inc.
Common Stock, No Par Value (File No. 7-0204)
CMS Energy Corp.
Common Stock, $.01 Par Value (File No. 7-0205)
Stone Container Corporation (Delaware)
Common Stock, $1.00 Par Value (File No. 7-0206)

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 June 25, 1987 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. 87-13102 Filed 6-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release 34-24544; File No. SR-NASD-87-24]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

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 2, 1987, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. The Commission is publishing this ORDER 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 NASD hereby requests that the Securities and Exchange Commission ("SEC") extend the period of effectiveness of the NASD's Pilot Program for the exchange of quotation information between The International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("Exchange"), formerly The Stock Exchange, London, England and the NASD. This matter was the subject of four previous filings by the NASD: File Nos. SR-NASD-86-4, SR-NASD-86-26, SR-NASD-86-35 and SR-NASD-87-15. Each of those filings was approved timely by the Commission to enable continuous operation of the Pilot Program from April 22, 1986 through June 3, 1987. The NASD is seeking the extension of this approval until August 31, 1987. The proposed extension will permit continued operation of the Pilot Program while the Commission considers the disposition of File No. SR-NASD-87-20. In that filing the NASD requests Commission approval of the Pilot for a prospective two-year term as well as certain modifications in access terms.

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 NASD include statements concerning the purpose of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule filing is to obtain an extension of the SEC's temporary approval of the Pilot Program through August 31, 1987. Absent such an extension, the NASD's link with the Exchange will terminate on June 3, 1987.

The Pilot Program, which is the first transatlantic communication link of its kind between major domestic and foreign equities marketplaces, provides a unique opportunity to gather than analyze information leading to the efficient and effective development of international trading, related regulatory programs and potentially new systems designs. As currently structured, the Pilot Program provides for the exchange of market data, between the NASD and the Exchange, without charge, on a group of securities of international interest and the transmission of that data by the recipient (NASD or Exchange) to its current subscribers as part of either NASDAQ Level 2/3, TOPIC, or TOPICLINE service. When the Pilot Program was originally filed (*i.e.*, File No. SR-NASD-86-4), the NASD requested the SEC's approval of the Pilot for a two year period. At the SEC's request, however, the NASD has acquiesced in the Agency's approval of the Pilot for shorter, consecutive time periods.

This tentative approach is not traceable to any regulatory concern, actual or potential, arising from the linkage's daily operation. Rather, the SEC's reluctance to approve the Pilot Program for a two year term relates to the fact that the broker-dealers able to access quotes disseminated via the linkage are not assessed an additional fee for that access. This issue was raised by one vendor of securities market information (hereinafter referred to as the "Vendor") during the SEC's notice and comment procedure on the original rule filing (File No. SR-NASD-86-4).[1] Vendor claimed that this aspect of the Pilot Program was anticompetitive because Vendor could not obtain access to linkage data (particularly market marker's quotations) from the NASD or the Exchange on the same terms as participating brokers, *i.e.*, at no cost. Further, Vendor maintained that the NASD was utilizing its status as a self-regulatory organization to impede competition from Vendor by virtue of the NASD's receiving quotation information from the Exchange on a preferential basis.

The Association continues to believe that the legal and economic arguments that Vendor previously raised are lacking in merit. Moreover, those arguments suggest a misperception of the economic incentives that have prompted various market centers to initiate international linkages in recent years. Nonetheless, the NASD and the Exchanged have re-examined the original access terms for the Pilot Program and proposed certain modifications in File No. SR-NASD-87-20.[2] Generally, the proposed modifications would narrow the universe of firms/terminals accessing linkage data at no cost. Such modifications were based in part upon the preliminary results of an Exchange survey to provide objective information respecting the breadth of dissemination of Pilot data among Exchange members. This information should also respond definitively to specific questions raised by the Commission staff.

Because the final survey results will become available during the week of June 1, 1987, the Commission staff has requested additional time to analyze that data in conjunction with formulating a recommendation to the Commission on File No. SR-NASD-87-20. Therefore, the NASD has submitted the instant filing to sustain the operation of the Pilot Program until August 31, 1987 pursuant to temporary Commission approval. During the requested extension, only information on a limited group of securities of international interest will be exchanged on a like kind basis in lieu of separate and offsetting monetary transfers. Further, the NASD and the Exchange will refrain from

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[1] *See* letter from Daniel T. Brooks, Cadwalader, Wickersham & Taft, Counsel for Instinet Corporation, to John Wheeler, Secretary, SEC, dated April 16, 1986. *See also* Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 1589 (April 29, 1986).

[2] *See* Release No. 34-24364 (April 17, 1987), 52 FR 13891 (April 27, 1987). In this filing, the NASD also seeks approval of the Pilot Program for a two-year term which would commence from the Commission's approval of File No. SR-NASD-87-20.

introducing an automatic execution linkage during this temporary extension of the Pilot Program.

The NASD believes that the Pilot Program and the requested extension thereof, are consistent with sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *." Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of approval for the Pilot Program will foster significant progress toward these ends by providing the cooperative regulatory environment and operating experience necessary to realize these goals in the international marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its first release announcing temporary approval of the Pilot Program, the Commission articulated arguments made by Vendor regarding the competitive impact that the Program may have on Vendor. These arguments were summarized in the preceding section. In response, the NASD and the Exchange re-examined the existing access terms, and have proposed to narrow the universe of firms/terminals permitted access to linkage data at no cost. These changes are contained in File No. SR–NASD–87–20. Hence, the NASD and the Exchange are making a good faith effort to address the preceived competitive concerns raised by Vendor and reiterated by the SEC in its original release. In light of these factors, the NASD believes that no additional competitive burden would be created by the SEC's extension of the Pilot Program until August 31, 1987.

During the period of extension requested herein, no use will be made of the information exchanged for purposes of operation of an automatic execution system. Given the limited numbers of securities involved, the limited use to be made of the information exchanged, and the NASD's efforts to address the competitive issues previously raised, the NASD submits that the benefits to be derived from the further extension of the Pilot Program significantly outweigh any perceived burden upon competition and materially advance the purposes to be served under the above-referenced sections of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others.

Not applicable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**, and, in any event, by June 3, 1987, the expiration date for the Pilot Program. The NASD believes that the continuation of the Pilot Program provides an opportunity to develop additional information leading to the efficient and effective development of international trading, related regulatory programs and the potential for new system designs. Accordingly, the NASD believes that good cause exists to accelerate the effectivenesses of the rule change to no later than June 3, 1987.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1) (B) and (C), and 15A(b)(6), and 17A(a)(1) (C) and (D) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. Specifically, accelerated approval and the continuation of the Pilot Program will benefit public investors and provide the opportunity to develop additional information leading to the efficient and effective development of international trading, related regulatory programs and the potential for new system designs. The Commission recognizes that without accelerated approval the authorizations for the Pilot Program will expire June 3, 1987. The Commission believes that accelerated approval will avoid an unnecessary interruption of the Pilot Program while allowing the NASD to complete its good faith effort to gather data in response to the Commission staff's inquiries concerning the feasibility of narrowing the universe of firms and terminals accessing linkage data at no cost. The Commission has requested that the NASD gather and analyze the relevant data necessary to amend its permanent rule filing, SR–NASD–87–20. The Commission does not believe that the linkage should be terminated while these efforts are ongoing. The Commission believes that the benefits of extending its approval of the Pilot Program on a temporary basis outweigh any potential adverse effects during the period of the rule change's effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, and 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 communications 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 Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD and should refer to file number SR–NASD–87–24 and should be submitted by June 30, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: June 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–13106 Filed 6–8–87; 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.

June 4, 1987.

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:

Lukens, Inc. (Delaware) (Holding Company)
Common Capital Stock, $0.01 Par Value (File No. 7-0189)
Shaklee Corporation (Delaware)
Common Stock, No Par Value (File No. 7-0190)
Federal National Mortgage Association
Warrants expiring February 25, 1991 (File No. 7-0191)
National Semiconductor Corporation
Warrants expiring May 1992 (File No. 7-0192)

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 June 25, 1987, 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 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. 87-13103 Filed 6-8-87; 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.

June 4, 1987.

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:

Standard Brands Paint Company
Common Stock, $1.00 Par Value (File No. 7-0193)
First Financial Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-0194)
Getty Petroleum Company
Common Stock, $0.10 Par Value (File No. 7-0195)
Global Yield Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-0196)
Kaufman & Broad Home Corporation
Common Stock, $1.00 Par Value (File No. 7-0197)
The Mead Corporation
Common Stock, No Par Value (File No. 7-0198)
Pier 1 Imports, Inc.
Common Stock, $1.00 Par Value (File No. 7-0199)
Snap-On Tools Corporation
Common Stock, $1.00 Par Value (File No. 7-0200)
USLIFE Corporation
Common Stock, $1.00 Par Value (File No. 7-0201)

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 June 25, 1987, 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 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. 87-13104 Filed 6-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15766 (File No. 812-6747)]

General Electric Co. and General Electric Investment Corp.; Filing of Application and Order of Temporary Exemption

June 4, 1987.

Notice is hereby given that General Electric Company ("GE"), 3135 Easton Turnpike, Fairfield, CT 06431, and General Electric Investment Corporation ("Investment Corporation"), 292 Long Ridge Road, Stamford, CT 06904, (collectively, "Applicants") filed an application (the "Application") on June 4, 1987, pursuant to section 9(c) of the Investment Company Act of 1940 (the "Act") for a permanent order of exemption from the provisions of section 9(a) of the Act, operative as a result of entry of an injunction against Kidder, Peabody & Co. Incorporated described therein, and for an order of temporary exemption from section 9(c).

Applicants state that the Application is made on behalf of themselves and all companies (as defined in the Act) which are directly or indirectly controlled by GE, other than Kidder, Peabody Group Inc. ("Group"), Kidder, Peabody & Co. Incorporated ("Kidder") or any company controlled by Group or Kidder (the "GE Subsidiaries"). According to the Application, Group, Kidder and a subsidiary of Kidder are making a separate application for an exemption pursuant to section 9(c) of the Act.

The Application states that GE is a New York corporation and a diversified manufactured, technology, communications, financial services and consumer services company. GE owns all of the outstanding common stock of Investment Corporation, a Delaware corporation, and has numerous other subsidiaries. Applicants state that Investment Corporation serves as investment adviser to the following registered investment companies: Elfun Trusts, Elfun Income Fund, Elfun Tax-Exempt Income Fund, General Electric S & S Program Mutual Fund, and General Electric S & S Program Long Term Interest Fund (the "GE Investment Companies"). According to the Application, Investment Corporation proposes to act as investment adviser to additional investment companies in the future, including several investment companies which are in preparation for registration.

Application state the GE, through a wholly-owned subsidiary, acquired approximately eighty percent of the issued and outstanding common stock of Kidder after the conduct which is the subject of the injunction against Kidder is alleged to have occurred. Subsequently, according to the Application, Group was formed as a holding company and GE, through a wholly-owned subsidiary, owns 80% of the issued and outstanding common stock of Group, and Group owns all of the issued and outstanding common stock of Kidder. Applicants state that GE controls Group and Kidder, and that all GE Subsidiaries, including Investment Corporation, are under common control with Group and Kidder. Accordingly, GE and all GE Subsidiaries, including Investment

Corporation, are affiliated persons of Kidder within the meaning of the Act.

According to the Application, on June 4, 1987, the Commission filed a complaint (the "Complaint") in the United States District Court for the Southern District of New York in a civil action entitled *Securities and Exchange Commission v. Kidder Peabody & Co. Incorporated,* 87 Civ. 3869 (RO) (the "SEC Action"). Applicants state that, on the same day, Kidder entered into, and the parties filed in the SEC Action a related Consent and Undertakings in which Kidder neither admitted nor denied any of the allegations in the Commission's Complaint except as to jurisdiction, but agreed to establish a fund of approximately $13,676,101 which would be available to compensate anyone with valid claims of injury from the conduct alleged, and to pay a penalty to the U.S. Treasury of approximately $11,618,674. Pursuant to the Consent and Undertakings, the District Court entered a Final Judgment of Permanent Injunction and Other Relief against Kidder (the "Final Judgment"). Accordingly to the Application, among other provisions, the Final Judgment enjoins Kidder from engaging in certain transactions, acts or practices which constitute or would constitute violations of sections 7(c), 10(b), 14(e) and 17(a)(1), or constitute or would constitute aiding and abetting violations of sections 15(c)(3) and 17(a)(1), of the Securities Exchange Act of 1934 (the "Exchange Act") and various rules promulgated thereunder.

According to the Application, also on June 4, 1987, the Commission instituted administrative proceedings against Kidder pursuant to secion 15(b)(4) of the Exchange Act, entitled *In the Matter of Kidder, Peabody & Co., Incorporated,* Administrative Proceeding File No. 3–6855 (the "SEC Order"). Applicants state that, on the same day, Kidder filed an Offer of Settlement (the "Offer") with respect to the SEC Order, which was accepted by the Commission and incorporated into the SEC Order (See Exchange Act Release No. 24543). The Applicants state that the Final Judgment was the basis for the SEC Order.

Section 9(a)(2) of the Act provides, in pertinent part, that it is unlawful for any person to serve or act in the capacity of investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company, if such person, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Section 9(a)(3) of the Act provides that it shall be unlawful for a company, any affiliated person of which is ineligible by reason of section 9(a)(1) or 9(a)(2) of the Act, to serve in the foregoing capacities.

Section 9(c) provides that, upon application, the Commission shall by order grant an exemption from the provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe, or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Applicants submit that the prohibitions of section 9(a) of the Act, operative as a result of entry of the Final Judgment against Kidder in the SEC Action, would be unduly and disproportionately severe as applied to Applicants and the GE Subsidiaries, and the the conduct of Applicants and the GE Subsidiaries has been such as not to make it against the public interest or protection of investors to grant this Application.

Applicants state that they base the Applicant on the following grounds:

1. Applicants are subject to the prohibitions of section 9(a) solely because they and the GE Subsidiaries are affiliated persons of Kidder within the meaning of the Act. Niether GE, Investment Corporation nor any of the other GE Subsidiaries were subjects of the Complaint, the Final Judgment or the SEC Order. In fact, the transactions referred to in the Complaint and the SEC Order are all alleged to have occurred prior to June 11, 1986, the date on which GE, through a subsidiary, acquired Kidder. Until June 11, 1986, the common stock of Kidder was owned entirely by Kidder's then officers directors and employees.

2. On June 11, 1986, General Electric Financial Services, Inc. ("Financial Services"), a wholly-owned subsidiary of GE, acquired approximately eighty percent of Kidder's then outstanding common stock. Thereafter, in September, 1986, Group was formed as a holding company, which through Kidder and various other subsidiaries of Group has, since October, 1986, carried on the businesses theretofore conducted by Kidder and its various subsidiaries. Neither at the time of Kidder's acquisition by Financial Services nor at the time of the formation of Group did GE, Financial Services or Investment Corporation have any knowledge, or any reason to know, of the circumstances which form the subject of the Complaint, the Final Judgment or the SEC Order.

3. The facts and circumstances to which the Complaint, the Final Judgment and the SEC Order relate do not in any way involve any activities of GE, Investment Corporation or any other GE Subsidiary.

4. None of the GE Investment Companies were in any way involved in any of the transactions referred to in the Complaint or in the SEC Order.

5. Denial of the requested order would be detrimental to investors in the GE Investment Companies, since those investors would no longer have the services of their investment adviser.

6. Denial of the requested order could result in further harm to investors in the GE Investment Companies because of the uncertainty caused by a prohibition against Investment Corporation's serving as adviser to the GE Investment Companies, which might bring about multiple redemptions of the shares of such funds.

7. Applicants have not previously filed an application for relief pursuant to section 9(c) of the Act.

8. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Applicants and the GE Subsidiaries, given the circumstances underlying the SEC Action, the facts referred to in paragraphs 1 through 4 above and Applicants' record of no prior Commission enforcement proceedings for violations of the Act.

9. Applicants believe that Investment Corporation's ability to serve as investment adviser to the GE Investment Companies, and the ability of Applicants and the GE Subsidiaries to act in the capacities referred to in section 9(a) of the Act, and to comply with the requirements of the Act, should not be impaired by the existence of the Final Judgment.

10. By reason of the foregoing, the conduct of Applicants and the GE Subsidiaries has been such as not to make it against the public interest or the protection of investors to grant the Application.

In making the Application, Applicants state that they acknowledge, understand and agree that the Application and any temporary exemption issued shall be without prejudice to the Commission's consideration of any other application for exemptions from statutory requirements by Applicants and the GE Subsidiaries, including the consideration

of their Application for a permanent exemption pursuant to section 9(c) from the provisions of sections 9(a) of the Act, or the revocation or removal of any temporary exemption granted in connection with the Application.

Based upon the foregoing, including Applicants' representations, the Final Judgment and the SEC Order, and the remedial provisions resulting therefrom, the Commission has considered the matter and finds, under the standards of section 9(c) of the Act applicable to this matter, that Applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly, it is ordered, pursuant to section 9(c) of the Act, that Applicants and the GE Subsidiaries (as defined above) are hereby temporarily exempted from the provisions of section 9(a) of the Act, operative as a result of entry of the Final Judgment against Kidder in the SEC Action, until the Commission takes final action on the Application for an order permanently exempting Applicants and the GE Subsidiaries (as defined above) from the provisions of section 9(a).

Notice is further given that any interested person, may, not later than June 29, 1987, at 5:30 p.m., submit to the Commission, in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, a permanent order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–13105 Filed 6–8–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No.—15765 (File No. 812–6746)]

Kidder, Peabody Group Inc., et al; Filing of Application and Order of Temporary Exemption

June 4, 1987.

Notice is hereby given that Kidder, Peabody Group Inc. ("Group"), Kidder, Peabody & Co. Incorporated ("Kidder"), and Webster Management Corporation ("Webster") (collectively, "Applicants"), 20 Exchange Place, New York, NY 10005, filed an application (the "Application") on June 4, 1987, pursuant to section 9(c) of the Investment Company Act of 1940 (the "Act") for an order exempting Applicants permanently from the provisions of section 9(a) of the Act, operative as a result of entry of an injuction against Kidder described therein, and for an order of temporary exemption from section 9(a).

Applicants state that each of them is a Delaware corporation, and that Kidder, a wholly-owned subsidiary of Group, is a registered broker-dealer and registered investment adviser with over 70 offices. According to the Application, Webster is wholly-owned by Kidder and Group is a holding company which is 80 percent owned by a wholly-owned subsidiary of General Electric Company ("GE"), a New York corporation, and 20 percent owned by officers and employees of Group and its subsidiaries. Accordingly, Webster and Group are affiliated persons of Kidder within the meaning of the Act.

Applicants state that Webster is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Applicants state that Webster serves as investment adviser to the following registered investment companies: Kidder, Peabody Equity Income Fund, Inc.; Kidder, Peabody Exchange Money Fund; Kidder, Peabody Government Income Fund, Inc.; Kidder, Peabody Government Money Fund, Inc.; Kidder, Peabody MarketGuard Appreciation Fund; Kidder, Peabody Premium Account Fund; Kidder, Peabody Special Growth Fund, Inc.; Kidder, Peabody Tax Exempt Money Fund, Inc.; Kidder, Peabody Tax-Free Income Fund; and Webster Cash Reserve Fund, Inc. (the "Kidder Investment Companies"). Applicants state that Webster manages in excess of $3.5 billion as investment adviser for these mutual funds. According to the Application, Webster proposes to act as investment adviser to additional investment companies in the future, including several investment companies which are in preparation for registration.

According to the Application, Webster is operated as a subsidiary of Kidder, and as such is separately managed. Webster's management sets policy regarding such matters as investments, fee schedules and staffing, and Webster places less than ten percent of its purchase and sale orders for its mutual funds' securities with Kidder.

Applicants also state that Kidder is one of several sponsors of a great number of series of Tax Exempt Securities Trust, a unit investment trust registered as an investment company with the Commission (the "UITs"), and that Kidder is the principal underwriter of each of the Kidder Investment Companies. The Application states that Kidder may sponsor future series of the UITs and other unit investment trusts which may be organized in the future.

According to the Application, on June 4, 1987, the Commission filed a complaint (the "Complaint") in the United States District Court for the Southern District of New York in a civil action entitled *Securities and Exchange Commission v. Kidder & Co. Incorporated*, 87 Civ. 3869 (RO) (the "SEC Action). The Applicants state that, on the same day, Kidder, entered into, and the parties filed in the SEC Action a related Consent and Undertakings in which Kidder neither admitted nor denied any of the allegations in the Complaint except as to jurisdiction, but agreed to establish a fund of approximately $13,676,101 which would be available to compensate anyone with valid claims of injury from the conduct alleged, and to pay a penalty to the U.S. Treasury of approximately $11,618,674. Pursuant to the Consent and Undertakings the District Court entered a Final Judgment of Permanent Injunction and Other Relief against Kidder (the "Final Judgment"). According to the Application, among other provisions, the Final Judgment enjoins Kidder from engaging in certain transactions, acts, practices or courses of business which constitute or would constitute violations of sections 7(c), 10(b), 14(e), and 17(a)(1), or constitute or would constitute aiding and abetting violations of section 15(c)(3) and 17(a)(1), of the Securities Exchange Act of 1934 (the "Exchange Act") and various rules promulgated thereunder.

The Complaint alleges that Kidder violated sections 10(b) and 14(e) of the Exchange Act and rules promulgated

thereunder by engaging, for its own account, in purchases or sales of the securities of six named companies while in possession of material, non-public information concerning tender offers or other extraordinary corporate transactions concerning such companies. The Complaint asserts that such information was obtained by a former executive of Kidder as part of a scheme for the exchange of non-public information with a partner at another investment banking firm. These allegations are directed to events in 1984 and 1985; the executive ceased employment with Kidder in February, 1986. Other allegations of the Complaint allege violations by Kidder of sections 7(c) and 17(a)(1) of the Exchange Act and various rules promulgated thereunder and aiding and abetting in violations by another entity of sections 15(c)(3) and 17(a)(1) of the Exchange Act and various rules promulgated thereunder. These provisions relate to the maintenance and preservation of accurate books and records, adherence to margin requirements prescribed by the Federal Reserve Board and compliance with net capital requirements applicable to broker-dealers. The violations alleged in the Complaint with respect to all of these provisions stem from several transactions in 1984 and 1985 involving another broker-dealer. According to the Complaint, oral understandings between Kidder and the other broker-dealer enabled the other broker-dealer to avoid adherence to the net capital requirements and constituted an impermissible extention of credit to such entity by Kidder.

According to the Application, also on June 4, 1987, the Commission instituted proceedings against Kidder pursuant to section 15(b)(4) of the Exchange Act, entitleld *In the Matter of Kidder, Peabody, & Co. Incorporated,* Administrative Proceeding File No. 3–6855 (the "SEC Order"). Applicants state that, on the same day, Kidder filed an Offer of Settlement (the "Offer") with respect to the SEC Order, which was accepted by the Commission and incorporated into the SEC Order (See Exchange Act Release No. 24543). Applicants state that the Final Judgment was the basis of the SEC Order and that, in the SEC Order, the Commission censured Kidder and ordered that Kidder comply with its undertakings (consisting of certain remedial measures to be taken by Kidder designed to prevent future occurrence of the conduct alleged in the Complaint and to ensure Kidder's compliance on an ongoing basis with the federal securities laws and the rules and regulations of self-regulatory organizations) set forth in the Offer.

Section 9(a)(2) of the Act provides, in pertinent part, that it is unlawful for any person to serve or act in the capacity of investment adviser or depositor of any registered investment company, or principal underwriter for any registered open-end investment company, registered unit investment trust or registered face amount certificate company, if such person, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Section 9(a)(3) of the Act provides that it shall be unlawful for a company, any affiliated person of which is ineligible by reason of section 9(a)(1) or 9(a)(2) of the Act, to serve in the foregoing capacities.

Section 9(c) provides that, upon application, the Commission shall by order grant an exemption from the provisions of section 9(a), either uncomditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe, or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Applicants submit that the prohibitions of section 9(a) of the Act, operative as a result of entry of the Final Judgment in the SEC Action, would be unduly and disproportionately severe as applied to Applicants and that the conduct of Applicants have been such as not to make it against the public interest or protection of investors to grant the Application.

Applicants state that they base their Application on the following grouds:

1. Kidder provides a broad range of investment banking and financial services on a worldwide basis. The allegations in the Complaint relate to a small number of transactions over a limited period of time. The facts and circumstances to which the Final Judgment and the SEC Order relate do not in any way involve any activities of Kidder or Webster acting as investment adviser, depositor, sponsor or principal underwriter for any registered investment company.

2. None of the Kidder Investment Companies were in any way involved in any of the transactions referred to in the Complaint or the SEC Order.

3. Kidder has undertaken to take certain steps designed to prevent future occurrence of the conduct alleged in the Complaint and to ensure Kidder's compliance on an ongoing basis with the federal securities laws and the rules and regulations of self-regulatory organizations. Such steps, which are incorporated in the SEC Order, include the following:

(a) Kidder's undertakings to retain a consultant to conduct a review, focusing on the subject matters and areas of Kidder's operations discussed in the Complaint, of Kidder's policies, procedures and practices to ensure compliance with the federal securities laws, the rules of self-regulatory organizations and the maintenance of adequate books and records, to adopt the consultant's recommendations, except in those instances described in the SEC Order where satisfactory alternatives has been implemented, to deliver a copy of the consultant's report to the Commission and to participate in a follow-up review of the implementation of the consultant's recommendations.

(b) Kidder's undetaking to refrain from risk arbitrage activities until it has (1) adopted the procedures recommended in the consultant's report or has adopted satisfactory alternative procedures, and (2) implemented special compliance procedures to review positions taken in risk arbitrage trading.

4. Kidder has agreed to establish a fund of approximately $13,676,101 which would be available to compensate anyone with valid claims of injury from the conduct alleged, and to pay a penalty to the U.S. Treasury of approximately $11,618,674.

5. The personnel who had responsibility for the transactions alleged in the Complaint have had no involvement with registered investment companies and such persons will not be involved in the future management or advising of any registered investment company, or the future distribution of any registered investment company's securities by any Applicant.

6. The conduct that is the subject of the Complaint, the Final Judgment and the SEC Order is all alleged to have occurred no later than early 1986. Since that date, major changes have occurred in the ownership, corporate structure, board of directors and management of Kidder.

(a) On June 11, 1986, General Electric Financial Services ("Financial Services"), a wholly owned subsidiary of General Electric Company ("GE"), acquired approximately eighty percent

of Kidder's then outstanding common stock.

(b) In September, 1986, Group was formed as a holding company, which through Kidder and various other subsidiaries of Group, has, since October, 1986, carried on the businesses theretofore conducted by Kidder and its various subsidiaries.

(c) The board of directors of Group, the holding company owning all of the stock of Kidder, is now composed of persons, a majority of whom are representatives of Financial Services and/or GE.

(d) Kidder's senior management presently has among its members a number of newly-appointed executives whose historical, long-standing affiliations have been with GE.

7. Kidder and Webster represent that:

(a) At their expense, they will retain an outside consultant knowledgeable in investment adviser and investment company operations (the "Investment Company Consultant") to conduct a review of the policies and procedures utilized by Kidder and Webster to prevent violations of the federal securities laws in connection with their investment company business and to recommend, where appropriate, changes in policies, procedures and staffing necessary to assure ongoing compliance. The Investment Company Consultant shall not be unacceptable to the Commission and may be someone who has previously rendered services to Kidder or its affiliates. Such review shall be completed within 180 days of the date of the filing of the Application with the Commission.

(b) They will, within 60 days of the delivery to them of the Investment Company Consultant's report and recommendaions, submit such report and recommendations to the Commission together with a report of Kidder and Webster setting forth the action they have taken or propose to take concerning implementation of such recommendations.

(8) Denial of the requested order could result in detriment to investors in the Kidder Investment Companies, and the UITs since those investors would no longer have the services of their investment adviser, depositor, sponsor or principal underwriter, as the case may be.

(9) Denial of the requested order could result in further harm to investors in the Kidder Investment Companies and the UITs because of the uncertainty caused by Kidder and Webster being prohibited from serving the UITs and the Kidder Investment Companies, as the case may be, which might bring about multiple redemptions of the shares of such funds or reduce the marketabilty of units in the UITs.

(10) No Applicant has previously filed an application for relief pursuant to section 9(c) of the Act.

(11) The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Applicants, given the circumstances underlying the SEC Action and Applicants' record of no prior Commission enforcement proceedings for violations of the Act.

(12) Applicants believe that Webster's ability to serve as investment adviser to the Kidder Investment Companies, and the ability of each of Applicants to act in the capacities referred to in section 9(a) of the Act, and to comply with the requirements of the Act, should not be impaired by the existence of the Final Judgment.

(13) By reason of the foregoing, the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant this Application.

In making the Application, each Applicant states that it acknowledges, understands and agrees that (1) its Application and any temporary exemption issued by the Commission to Applicants shall be without prejuduce to the Commission's consideration of any other application for exemptions from statutory requirements by any Applicant, including the consideration of their Application for a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the Act, or the revocation or removal of any temporary exemption granted in connection with the Application, and (2) no permanent order of exemption will be issued by the Commission until the submissions referred to in paragraph 7(b) above shall have been made.

Based upon the foregoing, including Applicants' representations, the Final Judgment and the SEC Order, and the remedial provisions resulting therefrom, the Commission has considered the matter and finds, under the standards of section 9(c) of the Act applicable to this matter, that Applicants have made the necessary showing to justify granting of a temporary exemption.

Accordingly, it is ordered, pursuant to section 9(c) of the Act, that Applicants are hereby temporarily exempted from the provisions of section 9(a) of the Act, operative as a result of entry of the Final Judgment in the SEC Action, until the Commission takes final action on the Application for an order permanently exempting Applicants from the provisions of section 9(a).

Notice is further given that any interested person, may, not later than June 29, 1987, at 5:30 p.m., submit to the Commission, in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, a permanent order disposing of the application here in will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponments thereof.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–13101 Filed 6–8–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 1012; Delegation of Authority No. 164]

Delegation of Authority; Assistant Secretary for the Bureau of International Narcotics Matters

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. III; 22 U.S.C. 2658), as amended, I hereby delegate to the Assistant Secretary for International Narcotics Matters, the functions vested in the Secretary of State by Title III, Subtitle C, section 3202 of the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570).

The Assistant Secretary for International Narcotics Matters may redelegate to officers and employees under his/her direction and supervision any of the functions delegated to him/her above.

Dated: May 23, 1987.

George P. Shultz,

Secretary of State.

[FR Doc. 87–13033 Filed 6–8–87; 8:45 am]

BILLING CODE 4710–17–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Advisory Committee for Regulatory Negotiation Concerning Nondiscrimination on the Basis of Handicap in Air Travel; Meetings

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice; Schedule of Advisory Committee Meetings.

SUMMARY: The Department of Transportation gives notice, as required by the Federal Advisory Committee Act (Pub. L. 92-463), that meetings of its Advisory Committee on Regulatory Negotiation (concerning nondiscrimination on the basis of handicap in air travel) will meet during 1987 on the dates listed below.

DATES: Meetings of the Advisory Committee are scheduled on the following dates:

Wednesday, June 10
Tuesday, June 16
Tuesday, June 23
Thursday, July 9
Wednesday, July 22
Thursday, July 23
Monday, August 10
Tuesday, August 11
Thursday, August 20
Wednesday, September 2
Thursday, September 3
Wednesday, September 9
Thursday, September 10
Wednesday, September 23
Monday, October 5
Tuesday, October 6
Thursday, October 15
Friday, October 16
Monday, October 26
Monday, November 2
Tuesday, November 3
Thursday, November 5

ADDRESSES: The June 10 meeting will be held in Room 3200 of the Department of Transportation's headquarters building, located at 400 7th Street, SW., Washington DC. The June 16 meeting will be held at the Endependence Center of Northern Virginia, 2111 Wilson Blved., Suite 400, Arlington, Virginia. The June 23 meeting will be in room 8236 of the DOT building. Locations of subsequent meetings will be announced in a later notice. It is expected that most of these meetings will take place at the DOT headquarters building.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW, Room 10424, Washington, DC, 20590. 202-366-9306 (voice); 202-755-7687 (TDD).

SUPPLEMENTARY INFORMATION: The listed meetings of the advisory committee are for the purpose of negotiating the contents of a proposed regulation that be issued by the Department of Transportation to implement the Air Carrier Access Act of 1986, which prohibits discrimination on the basis of handicap in air travel. The meetings are open to the public. The Department requests that individuals planning to attend any of the meetings who will need the services of a sign language interpreter so inform the Department at least two days in advance of the meeting date. Interested persons may contact Mr. Ashby for this purpose.

Issued this day of June, 1987, at Washington, DC.

Rosalind A. Knapp,

Deputy General Counsel.

Gloria Jean Gladden,

Alternate Certifying Officer.

[FR Doc. 87-13206 Filed 6-5-87; 3:28 pm]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-87-11]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 29, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 3, 1987.

Leonard R. Smith,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23430	Douglas Aircraft Company	14 CFR 61.57(c)	Extension of Exemption No. 3754 to allow petitioner's pilots to be allowed to meet the pilot-in-command landing recency requirements by using a Phase I simulator. *Granted, April 29, 1987.*
25120	Singapore Airlines, Inc	14 CFR 21.197(c)	To allow issuance of a special flight permit with a continuing authorization for 10 Boeing 747-312 aircraft for U.S. registry. *Granted, May 18, 1987.*
23485	Everts Air Fuel	14 CFR 91.31(a)	Extension of Exemption No. 4296 to allow petitioner to operate its McDonnell Douglas DC-6B aircraft, S/N 45174, at a 5 percent increased zero fuel and landing weight for the purpose of transporting diesel fuel to isolated native villages and seismic exploration teams in the Alaskan back country in the manner permitted by §§ 121.198 and 129.23. *Granted, April 29, 1987.*
17709	Alaska Airlines, Inc	14 CFR Parts 21 and 91	Extension of Exemption No. 2586 to allow petitioner to perform under the authority of its Operating Certificate No. 802 maintenance, preventive maintenance, alterations, inspections, major repairs, and major alterations on Boeing Model 727-90C aircraft that are being operated by Standard Alaska Production Company under a lease agreement. *Granted, April 30, 1987.*

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
24413	Flight Training International	14 CFR 61.63(d) (2) and (3) and 61.157(d)(1)	To allow trainees of petitioner, who are applicants for an airline transport pilot certificate or a type rating to be added to any grade of pilot certificate, to substitute the practical test requirements of § 61.157(a) for those of § 61.63(d) (2) and (3) and to complete a portion of that practical test in a simulator as authorized by § 61.157(d). *Granted, April 30, 1987.*
25007	People Express Airlines, Inc	14 CFR 145.51	To allow petitioner to utilize certificated repair stations to perform line and overnight maintenance services at places other than the home base of the certificated repair station. *Denied, May 11, 1987.*
24593	Flying Tiger Line, Inc., and Venezolana International de Aviacion, S.A. (VIASA).	14 CFR 121.181, 43.3, 43.7, and 121.379	Partial extension of Exemption No. 4314 to allow Flying Tiger Line, Inc., to perform maintenance, preventative maintenance, alterations, inspections, major repairs, and major alterations of B-747 aircraft leased to VIASA and approve the aircraft for return to service. *Granted, April 30, 1987.*
23147	Boeing Commercial Airplane Company	14 CFR 91.195(a)(1)	To allow petitioner to conduct noise measurement tests, Ground Proximity Warning System research and development, and FAA certification flight tests at altitudes lower than 1,000 feet above the surface. *Granted, April 29, 1987.*
25081	Helicopter Association International	14 CFR 61.197(c)	To allow the attendees of petitioner's 1985 flight instructor course a 30-day extension of their certificates so that these certificates do not expire prior to the 1987 flight instructor course. *Denied, May 4, 1987.*
24876	Servair, Inc. and Servair Corporation	14 CFR 145.35(c) and 145.37(b)	To allow petitioner to obtain Repair Station Certificates for its locations at international airports in San Francisco, Honolulu, and Anchorage without possessing a permanent hangar large enough to house a Boeing 747 aircraft which petitioner states is the heaviest aircraft on which Servair seeks an airframe rating to perform preflight and turnaround maintenance. *Denied, May 8, 1987.*
24914	United States Department of the Interior, Office of Aircraft Services.	14 CFR 45.29	To allow the operation of U.S. Fish and Wildlife Service aircraft displaying 2-inch high nationality and registration marks (N numbers) in place of the 12-inch marks now required. *Denied, May 4, 1987.*
24991	Federal Express Corporation	14 CFR 121.371(a) and 121.378	To allow petitioner to utilize the facilities of TAP Air Portugal, an FAA-certificated foreign repair station, for the inspection, repair, and overhaul of its Boeing 727 aircraft. *Denied, May 14, 1987.*
17067	Macavia International Corporation	14 CFR 91.27	To allow petitioner to conduct ferry flights with one engine inoperative on its McDonnell Douglas DC-6 aircraft without obtaining a special flight permit for each flight. *Granted, May 13, 1987.*
25061	Airborne Express, Inc	14 CFR Part 121, Appendix E	To allow petitioner to fulfill the night takeoff requirements for initial training during initial operating experience which, because of petitioner's normal operations, is conducted at night. *Denied, May 18, 1987.*

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulaitons affected	Description of relief sought disposition
25030	Ransome Airlines, Inc Ransome Pan AM Express	93.123 93.126, 93.129	The petitioner requested exemption from FARs to conduct additional Separate Access Landing (SALS) commuter operations at John F. Kennedy International Airport (JFK) using short takeoff and landing (STOL) aircraft and special procedures. *Granted, April 8, 1987.*
25177	United States Coast Guard (USCG)	91.65 (a) & (b), 91.70, 91.73 (a) & (d), 91.79(c), 91.85(b), 91.109(a).	An exemption would facilitate the USCG mission with regard to interdiction of illegal drug trafficking. *Granted, April 22, 1987.*
23609	State of Florida	91.109(a)	This exemption would permit the operation of multi-engine aircraft for aerial mapping, aerial photograph, survey and thermal scan operations at altitudes contrary to those prescribed for certain directions of flight. *Granted, May 1, 1987.*
25265	American Western	14 CFR 121.371(a), 121.378	Allow American West Airlines, Inc., to use Rolls-Royce, Ltd., of Derby, England, to perform maintenance, preventive maintenance, and alterations on RB-211-535 series engines listed in the operations specifications of America West Airlines, Inc. *Granted 4/22/87 1987.*

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulaitons affected	Description of relief sought disposition
16299	Kenmore Air Harbor, Inc	14 CFR 141.37(e) and Part 141, Appendix D	Extension of Exemption No. 2376 to permit trainees of petitioner to use a seadrome without permanent runway lights for night training flights involving seaplanes and to permit crediting toward flight instruction and cross-country night flights in seaplanes with a landing in a body of water less than 100 miles from the point of departure, provided that those flights include a landing at a point other than the point of departure, and the flights are round trip night cross-country flights to a point more than 100 miles from the point of departure. *Granted, April 27, 1987*
25035	Evergeen International Airlines, Inc	14 CFR 121.503 (a), (b), and (d)	To allow petitioner to schedule a pilot to fly 10 hours in any 24-hour period and to schedule a crewmember for 150 hours of duty in any 30 consecutive days. *Denied, April 24, 1987.*
25076	Eastern Air Lines	14 CFR 121.371(a) and 121.378	To allow petitioner to use Rolls-Royce, Ltd., of Derby, England as an overhaul and repair source for its Rolls-Royce RB 211-22B and RB 211-535 series engines. *Granted, April 22, 1987.*
25184	Imperial Aviation, Inc	14 CFR 121.371(a) and 121.378	To allow petitioner to contract with original equipment component manufacturers which are located outside of the United States for inspection, repair, and overhaul of selected aircraft parts to support its Fairchild FH-227 aircraft program. *Granted, May 19, 1987.*
10943	Air Transport Association	14 CFR 121.291 and Part 121, Appendix D	Exemption No. 1402B allowed certain member airlines of petitioner, as well as other Part 121 certificate holders who were subsequently approved by the FAA, to place into scheduled air carrier operation the McDonnell Douglas DC-10 without first complying with the requirements for the demonstration of emergency evacuation procedures for each type and model of airplane with a seating capacity of more than 44 passengers, that were used in passenger operations. *Rescinded, May 19, 1987.*

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
11743	Air Transport Association	14 CFR 121.291 and Part 121, Appendix D	Exemption No. 1540 allowed certain member airlines of petitioner, as well as other Part 121 operators who were subsequently approved by the FAA, to place into scheduled air carrier operation the Lockheed L-1011 without first complying with the requirements for the demonstration of emergency evacuation procedures for each type and model of airplane with a seating capacity of more than 44 passengers, that were used in passenger carrying operations. *Rescinded, May 19, 1987.*
24568	Flying Tiger Line, Inc	14 CFR 121.371(a) and 121.378	Extension of Exemption No. 4359 to allow petitioner to continue to use Japan Air Lines Co., Ltd., to maintain and repair engine models JT9D-70A and JT9D-7Q that are used on Flying Tigers Boeing 747-200F aircraft. *Granted, May 20, 1987.*

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
22872	Air Transport Association of America	14 CFR 61.157(a) and 121.424 (a) and (b) and Part 61, Appendix A and Part 212, Appendix E.	Extension of Exemption No. 44116 to allow: (1) A pilot employee of a certificate holder, who is a candidate for a type rating in large airplane requiring only two crewmembers for its operation, to use approved advanced pictorial means for the preflight visual inspection practical test requirement without conducting an actual visual inspection of the passenger cabin compartment and exterior of the airplane, and to use a training device for the flight deck portion of the preflight visual inspection; and (2) a pilot employee of a certificate holder who is enrolled in that certificate holder's course of instruction in a large airplane requiring only two crewmembers, to use an approved training device for the flight deck portion of the preflight visual inspection.
25151	Challenge Air Transport, Inc	14 CFR 121.153(c)(2)	To allow petitioner to operate one leased Short Brothers and Harland Limited, Short SC-5 Belfast aircraft for 2 years even though the aircraft does not have a U.S. type design certificate. **NOTE.**—This petition was previously reopened on April 16 (52 FR 12488) with the comment period closing on June 1. At the request of the National Air Carriers Association, the comment period is being reopened for an additional 30 days in order to provide sufficient time to comment on additional information submitted.
25245	USAF	14 CFR 91.24(b)	Petitioner seeks to continue to operate its aircraft without operating the aircraft's transponder. Petitioner also seeks to expand the area affected by such operations.
24252	Department of the Air Force	14 CFR 101, 101.13(a)(2), 101.13(a)(4)	On behalf of the Military Airlift Command, the Force requests exemption from FAR section 101.13(a)(2) and 101.13(a)(4) to allow the first Special Operations Wing to conduct training with the Fulton Recovery System.
23576	Division of Law Enforcement	14 CFR 91.79(c), 91.85(b)	To allow petitioner to be exempted from §§ 91.79(c) and 91.85(b) to conduct certain law enforcement and natural resource management air support operations.
036CE	OMAC, Inc	14 CFR 23.903.(e)(2)	To allow certification of their Model Laser 300 airplane without providing a means to stop the rotation of the turbine engine.

[FR Doc. 87-13016 Filed 6-8-87; 8:45 am]
BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and record keeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. USIA is requesting approval of the extension of a program OMB 3116-0187, which will be used to collect data on prospective grantees who will implement USIA youth exchange programs under Pub. L. 87-256, Mutual Educational and Cultural Exchange Act of 1961. Respondents will be required to respond only one time.

DATE: Comments must be received by July 2, 1987.

Copies: Copies of the Request for Clearance (SF-83), Supporting Statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Retta Graham-Hall, United States Information Agency, M/AS, 301 4th Street SW., Washington, DC 20547. Telephone (202) 485-7501, and OMB review: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington DC 20503. Telephone (202) 395-7340.

SUPPLEMENTARY INFORMATION: Title: "International Youth Exchange Organization Index".

Abstract: This information collection will be provided to prospective grantees applying for USIA international youth exchange grants to facilitate the selection process. Data provided by youth exchange organizations will be retained by USIA for review upon receipt of subsequent grant applications, thus facilitating the process of evaluating candidates' qualifications for conducting youth exchange programs. Having data available to USIA grant application reviewers will eliminate the need for candidates to resubmit the same information with each new grant application.

Proposed Frequency of Responses: No. of Respondents—200; Recordkeeping Hours—4; Total Annual Burden—800.

Dated: June 2, 1987.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 87-13034 Filed 6-8-87; 8:45 am]

BILLING CODE 5230-01-M

VETERANS ADMINISTRATION

Agency Form Letter Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to 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). This document contains a reinstatement and lists the following information (1) The department or staff office issuing the form letter, (2) the title of the form letter, (3) the agency form letter number, if applicable, (4) a decription of the need and its use, (5) how often the form letter must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form letter, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form letter and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: June 1, 1987.

By direction fo the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Reinstatement

1. Department of Memorial Affairs
2. Gravesite Reservation Survey
3. VA Form Letter 40-12
4. The information is needed to determine if individuals holding gravesite reservations wish to retain their benefit or to determine their continued eligibility.
5. Biennially
6. Individuals or households
7. 15,332 responses
8. 3,076 hours
9. Not applicable.

[FR Doc. 87-13014 Filed 6-8-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 110
Tuesday, June 9, 1987

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).

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 6-87]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time, and Subject Matter

Tues., June 23, 1987 at 10:00 a.m.
Oral Hearing on objection to decision issued under the Ethiopian Claims Program: E-016—Crown Cork & Seal Company, Inc.
Tues., June 23, 1987 at 2:00 p.m.
Consideration of Hearings on the Record, Final Decisions, and Petitions to Reopen under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111-20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111-20th Street, NW., Room 400, Washington, DC 20579, Telephone: (202) 653-6155.

Dated at Washington, DC on June 5, 1987.

Judith H. Lock,
Administrtive Officer.

[FR Doc. 87-13186 Filed 6-5-87; 12:38 am]
BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 8, 15, 22, and 29, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 8

Monday, June 8

10:00 a.m.
Briefing by Executive Branch and Discussion of Possible Enforcement Action (Closed—Ex. 5 & 10)

Tuesday, June 9

2:00 p.m.
Discussion of Performance Indicator Program (Public Meeting)

Thursday, June 11

2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. NFS Ltd's Proposed Purchase of the Stock of NFS, Inc.—and OCAWIU's Request for Hearing (Tentative)
b. Metocoa, Inc., FDBA the Pesses Company (Hearing with Respect to Immediately Effective Order Modifying License No. STB-1254; EA-85-122) (Tentative)

Week of June 15—Tentative

Tuesday, June 16

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Nine Mile Point-2 (Public Meeting)
2:00 p.m.
Meeting with States and Affected Indian Tribes on the Status of National High Level Waste Program (Public Meeting)

Wednesday, June 17

2:00 p.m.
Discussion/Possible Vote on Fort St. Vrain Authorization to Exceed 35 Percent Power Level (Public Meeting)

Thursday, June 18

2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1) (Tentative)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 22—Tentative

Thursday, June 25

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 29—Tentative

Thursday, June 30

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Braidwood-1 (Public Meeting) (Tentative)

Wednesday, June July 1

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Robert B. McOsker,
Office of the Secretary.
June 4, 1987.

[FR Doc. 87-13242 Filed 6-5-87; 8:45 am]
BILLING CODE 7590-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-87-21]

TIME AND DATE: Tuesday, June 16, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. TA-203-17 (Heavyweight Motorcycles)—briefing and vote.
6. Recognition of outstanding keyworkers for the 1987 Savings Bond Drive.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,
Secretary.
June 4, 1987.

[FR Doc. 87-13190 Filed 6-5-87; 8:45 am]
BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-87-22]

TIME AND DATE: Thursday, June 25, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. 731–TA–338, 339, 340 (F) (Urea from the German Democratic Republic, Romania, and the Union of Soviet Socialist Republics)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

June 4, 1987.

[FR Doc. 87–13191 Filed 6–5–87; 12:45 pm]

BILLING CODE 7020–02–M

Corrections

Federal Register
Vol. 52, No. 110
Tuesday, June 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3325/P413; FRL-3180-7]

Pesticide Tolerance for Benomyl

Correction

In proposed rule document 87-7383 beginning on page 11293 in the issue of Wednesday, April 8, 1987, make the following corrections:

1. On page 11294, in the second column, in the first line, "1000 ppm" should read "100 ppm".

2. On the same page, in the second column, in the fourth complete paragraph, in the 20th line, the formula should read "7.52×10^{-9}" and in the 24th line, the formula should read "7.52×10^{-5} to 7.54×10^{-9}".

BILLING CODE 1505-01-D

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6752]

List of Communities Eligible for the Sale of Flood Insurance; Michigan et al.

Correction

In rule document 87-11844 beginning on page 20084 in the issue of Friday, May 29, 1987, make the following corrections:

§ 64.6 [Corrected]

1. On page 20084, in § 64.6, in the last column of the table, under "Special flood hazard areas identified", the first entry should read "Nov. 22, 1977" and the three entries reading "Do" should be removed.

2. On page 20085, in § 64.6, in the last column of the table, under "Special flood hazard areas identified", the 1st, 8th, 13th through 18th, 26th through 29th, and 39th entries, all reading "Do", should be removed.

BILLING CODE 1505-01-D

federal register

Tuesday
June 9, 1987

Part II

Department of Health and Human Services

Public Health Service

42 CFR Part 2

Confidentiality of Alcohol and Drug Abuse Patient Records; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 2

Confidentiality of Alcohol and Drug Abuse Patient Records

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, PHS, HHS.

ACTION: Final rule.

SUMMARY: This rule makes editorial and substantive changes in the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations. These changes are an outgrowth of the Department's commitment to make its regulations more understandable and less burdensome. The Final Rule clarifies and shortens the regulations and eases the burden of compliance.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Judith T. Galloway (301) 443–3200.

SUPPLEMENTARY INFORMATION: The "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations, 42 CFR Part 2, implement two Federal statutory provisions applicable to alcohol abuse patient records (42 U.S.C. 290dd–3) and drug abuse patient records (42 U.S.C. 290ee–3).

The regulations were originally promulgated in 1975 (40 FR 27802). In 1980 the Department invited public comment on 15 substantive issues arising out of its experience interpreting and implementing the regulations (45 FR 53). More than 450 public responses to that invitation were received and taken into consideration in the preparation of a 1983 Notice of Proposed Rulemaking (48 FR 38758). Approximately 150 comments were received in response to the Notice of Proposed Rulemaking and were taken into consideration in the preparation of this Final Rule.

The proposed rule made both editorial and substantive changes in the regulations and shortened them by half. This Final Rule adopts most of those changes, with some significant substantive modifications and relatively few editorial and clarifying alterations.

Synopsis of Substantive Provisions

The Confidentiality of Alcohol and Drug Abuse Patient Record regulations (42 CFR Part 2) cover any program that is specialized to the extent that it holds itself out as providing and provides alcohol or drug abuse diagnosis, treatment, or referral for treatment and which is federally assisted, directly or indirectly (§ 2.12 (a) and (b)).

The regulations prohibit disclosure or use of patient records ("records" meaning any information whether recorded or not) unless permitted by the regulations (§ 2.13). They do not prohibit giving a patient access to his or her own records (§ 2.23). However, the regulations alone do not compel disclosure in any case (§ 2.3(b)).

The prohibition on disclosure applies to information obtained by the program which would identify a patient as an alcohol or drug abuser (§ 2.12(a)(1)). The restriction on use of information to investigate or to bring criminal charges against a patient applies to any alcohol or drug abuse information obtained by the program (§ 2.12(a)(2)).

Any disclosure premitted under the regulations must be limited to that information which is necessary to carry out the purpose of the disclosure (§ 2.13).

The regulations permit disclosure of information if the patient consents in writing in accordance with § 2.31. Any information disclosed with the patient's consent must be accompanied by a statement which prohibits further disclosure unless the consent expressly permits further disclosures or the redisclosure is otherwise permitted by the regulations (§ 2.32). Special rules govern disclosures with the patient's consent for the purpose of preventing multiple enrollments (§ 2.34) and for criminal justice referrals (§ 2.35).

The regulations permit disclosure without patient consent if the disclosure is to medical personnel to meet any individual's bona fide medical emergency (§ 2.51) or to qualified personnel for research (§ 2.52), audit, or program evaluation (§ 2.53). Qualified personnel may not inlcude patient identifying information in any report or otherwise disclose patient identities except back to the program which was the source of the information (§§ 2.52(b) and 2.53(d)).

The regulations permit disclosure pursuant to a court order after the court has made a finding that "good cause" exists. A court order may authorize disclosure for noncriminal purposes (§ 2.64); for the purpose of investigating or prosecuting a patient if the crime involved is extremely serious (§ 2.65); for the purpose of investigating or prosecuting a program or a person holding the records (§ 2.66); and for the purpose of placing an undercover agent or informant to criminally investigate empolyees or agents of the program (§ 2.67).

A court order may not authorize disclosure of confidential communications unless disclosure is necessary to protect against an existing threat to life or serious bodily injury of another person; to investigate or prosecute an extremely serious crime; or if the patient brings the matter up in any legal proceedings (§ 2.63).

A court order may not authorize qualified personnel who received information without patient consent for the purpose of conducting research, audit, or program evaluation, to disclose that information or to use it to conduct any criminal investigation or prosecution of a patient (§ 2.62). Information obtained under a court order to investigate or prosecute a program or other person holding the records or to place an undercover agent or informant may not be used to conduct any investigation or prosecution of a patient or as the basis for a court order to criminally investigate or prosecute a patient (§ 2.66(d)(2) and § 2.67(e)).

These regulations do not apply to the Veteran's Administration, to exchanges within the Armed Forces or between the Armed Forces and the Veterans' Administration; to the reporting under State law of incidents of suspected child abuse and neglect to appropriate State or local authorities; to communications within a program or between a program and an entity having direct administrative control over the program; to communications between a program and a qualified service organization; and to disclosures to law enforcement officers concerning a patient's commission of (or threat to commit) a crime at the program or against personnel of the program (§ 2.12(c)).

If a person is not now and never has been a patient, there is no patient record and the regulations do not apply (§ 2.13(c)(2)).

Any answer to a request for a disclosure of patient records which is not permitted must not affirmatively reveal that an identified individual has been or is an alcohol or drug patient. One way to make such an answer is to give a copy of the confidentiality regulations to the person who asked for the information along with general advice that the regulations restrict the disclosure of alcohol or drug abuse patient records and without identifying any person as an alcohol or drug abuse patient (§ 2.13(c)).

Each patient must be told about these confidentiality provisions and furnished a summary in writing (§ 2.22).

There is a criminal penalty for violating the regulations: not more than $500 for a first offense and not more than $5,000 for each subsequent offense (§ 2.4).

COMPARISON WITH PROPOSED RULE

Subpart A—Introduction

Reports of Violations

Both the existing and proposed rules provide for the reporting of any violations of the regulations to the United States Attorney for the judicial district in which the violations occur, for reporting of violations on the part of methadone programs to the Regional Offices of the Food and Drug Administration, and for reporting violations by a Federal grantee or contractor to the Federal agency monitoring the grant or contract. (See §§ 2.7 and 2.5, respectively.)

Inasmuch as it is the Department of Justice which has ultimate and sole responsibility for prosecuting violations of these regulations, the Final Rule continues to provide for the reference of reports of any violations to the United States Attorney for the judicial district in which the violations occur.

It also continues to provide for the reference to the Regional Offices of the Food and Drug Administration of any reports of violations by a methadone program. As a regulatory agency, the Food and Drug Administration has both the organization and authority to respond to alleged violations.

The Final Rule no longer directs reports of violations by a Federal grantee or contractor to the Federal agency monitoring the grant or contract or, as in the proposed revision of the rules, violations by a Federal agency to the Federal agency responsible for the program. This change is made in recognition of the lack of investigative tools available to granting and contracting agencies and of the ultimate referral which must be made to the Department of Justice. Of course, if alleged violations come to the attention of the Department of Health and Human Services, they will be forwarded to an appropriate representative of the Department of Justice.

Subpart B—General Provisions

Specialized Programs

Like the proposed rule at § 2.12, the Final Rule is applicable to any alcohol and drug abuse information obtained by a federally assisted alcohol or drug abuse program. "Program" is defined in § 2.11 as a person which says it provides and which actually provides alcohol or drug abuse diagnosis, treatment, or referral for treatment. A program may provide other services in addition to alcohol and drug abuse services, for example mental health or psychiatric services, and nevertheless be an alcohol or drug abuse program within the meaning of these regulations so long as the entity is specialized by holding itself out to the community as providing diagnosis, treatment, or referral for treatment for alcohol and/or drug abuse.

If a facility is a provider of general medical care, it will not be viewed in whole or in part as a program unless it has either (1) an identified unit, i.e., a location that is set aside for the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment, or (2) it has personnel who are identified as providers of diagnosis, treatment, or referral for treatment *and* whose primary function is the provision of those alcohol or drug abuse services.

Regardless of whether an entire legal entity is a program or if a part of the entity is a program, the confidentiality protections cover alcohol or drug abuse patient records within any federally assisted program, as "program" is defined in these regulations.

Those comments opposed to limiting applicability of the regulations to "specialized" programs focused on the desirability of full and uniform applicability of confidentiality standards to any alcohol or drug abuse patient record irrespective of the type of facility delivering the services.

The Department takes the position that limiting applicability to specialized programs, i.e., to those programs that hold themselves out as providing and which actually provide alcohol or drug abuse diagnosis, treatment, and referral for treatment, will simplify administration of the regulations without significantly affecting the incentive to seek treatment provided by the confidentiality protections. Applicability to specialized programs will lessen the adverse economic impact of the current regulations on a substantial number of facilities which provide alcohol and drug abuse care only as an incident to the provision of general medical care. We do not foresee that elimination of hospital emergency rooms and general medical or surgical wards from coverage will act as a significant deterrent to patients seeking assistance for alcohol and drug abuse.

While some commenters suggested that there will be an increased administrative burden for organizations operating both a specialized alcohol and/or drug abuse program and providing other health services, we view this as the same burden facing all general medical care facilities under the existing rule.

In many instances it is questionable whether applicability to general medical care facilities addresses the intent of Congress to enhance treatment incentives for alcohol and drug abuse inasmuch as many alcohol and/or drug abuse patients are treated in a general medical care facility not because they have made a decision to seek alcohol and drug abuse treatment but because they have suffered a trauma or have an acute condition with a primary diagnosis of other than alcohol or drug abuse.

In sum, we are not persuaded that the existing burden on general medical care facilities is warranted by the benefit to patients in that setting. Therefore, the Final Rule retains the language of the proposed rule at § 2.11 defining "program" and making the regulations applicable at § 2.12 to any information about alcohol and/or drug abuse patients which is obtained by a federally assisted alcohol or drug abuse program for the purpose of treating, making a diagnosis for treatment, or making a referral for treatment of alcohol or drug abuse.

Communications between a Program and an Entity Having Direct Administrative Control

The existing regulations at § 2.11(p)(1) and the proposed rule at § 2.12(c)(3) exempt from the restrictions on disclosure communications of information within a program between or among personnel in connection with their duties or in connection with provision of patient care, respectively. The Department has previously interpreted the existing provision to mean that communications within a program may include communications to an administrative entity having direct control over the program.

The Final Rule has incorporated that legal opinion into the text by amending § 2.12(C)(3) to exempt from restrictions on disclosure "communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis treatment, or referral for treatment of alcohol or drug abuse" if the communications are within a program or between a program and an entity that has direct administrative control over the program. Paragraph (d) of that same section is accordingly amended to restrict any further disclosure by an administrative entity which receives information under § 2.12(c)(3).

Explanation of Applicability

The existing regulations are applicable to patient records maintained in connection with the performance of

any alcohol abuse or drug abuse prevention function which is federally assisted. Applicability is determined by the nature and purpose of the records, not the status or primary functional capacity of the recordkeeper. The definition of "alcohol abuse or drug abuse prevention function" includes specified activities "even when performed by an organization whose primary mission is in the field of law enforcement or is unrelated to alcohol or drugs."

The proposed regulations and the Final Rule at § 2.12 make the regulations applicable to any information about alcohol and drug abuse patients which is obtained by a federally assisted alcohol or drug abuse program. A program is defined to be those persons or legal entities which hold themselves out as providing and which actually provide diagnosis, treatment, or referral for treatment for alcohol and/or drug abuse. Thus, there is a fundamental shift toward determining applicability on the basis of the function of the recordkeeper and away from making that decision based solely on the nature and purpose of the records.

No alcohol and drug abuse patient records, whether identified by the nature and purpose of the records or the function of the recordkeeper, are covered by these regulations unless the diagnosis, treatment, or referral for treatment with which the records are connected is federally assisted.

Several commenters pointed out that while the regulatory language of the proposed rule on its face applies the rule to information about alcohol and drug abuse patients in federally assisted programs, the explanation of the applicability provision at § 2.12(e)(2) obscures the otherwise forthright statement by an additional standard based on the type of Federal assistance going to the program, i.e., some patient records in a federally assisted program would be covered and others would not. Those who commented on this section urged that coverage distinctions under the explanation in § 2.12(e)(2) be omitted because they result in disparate treatment of patient records within an alcohol and/or drug abuse program based on the type of Federal assistance going to the program. Other commenters asserted that basing coverage on the type of assistance is inconsistent with the clear meaning of the applicability provision in the proposed and Final Rule.

The Final Rule revises the proposed explanatory material at § 2.12(e)(2) to show that all alcohol and drug abuse patient records within a covered program are protected by the confidentiality provisions and that the record of an individual patient in an uncovered program, whose care is federally supported in some way which does not constitute Federal assistance to the program under § 2.12(b), is not afforded confidentiality protections. Thus, where a Federal payment is made to a program on behalf of an individual patient and that program is not otherwise federally assisted under § 2.12(b), the record of that individual will not be covered by the regulations. Although the Department expects them to be rare, it would be possible for such instances to occur. For example, if a Federal court places an individual in a for-profit program that is not certified under the Medicare program, that is not authorized to conduct methadone treatment, and is not otherwise federally assisted in any manner provided in § 2.12(b), the patient record of that individual would not be covered by the regulations even though the Federal court paid for the individual's treatment.

Comments to the proposed rule were persuasive that the type of assistance should not affect the scope of records covered within a covered program. When the determination of covered records was based on the purpose and nature of each record, it was consistent to view Federal assistance from the perspective of each individual record. However, when the determination of which records are covered is based on who is keeping the records, as in the proposed and Final Rule, it is consistent with the approach to view Federal assistance from the program level as applying to all alcohol and drug abuse patient records within the program.

Determining coverage based on Federal assistance to the program rather than to an individual represents a change in policy from the current regulations under which the Department views a Federal payment made on behalf of an individual as sufficient to cover that individual's record. However, any disadvantage in not covering individual records in those rare cases which may occur is outweighed by the advantages of consistency and efficiency in management of the program as a result of all alcohol and drug abuse patient records in the program being subject to the same confidentiality provisions.

The Final Rule includes new material at § 2.12(e)(3) which briefly explains the types of information to which the restrictions are applicable, depending on whether a restriction is on disclosure or on use. A restriction on disclosure applies to any information which would identify a patient as an alcohol or drug abuser. The restriction on use of information to bring criminal charges or investigate a patient for a crime applies to any information obtained by the program for the purpose of diagnosis, treatment, or referral for treatment of alcohol or drug abuse.

Several commenters strongly urged the explicit inclusion of school-based education and prevention programs in the applicability of the regulations. School-based education and prevention activities may fall within the definition of a program if they provide alcohol or drug abuse diagnosis, treatment, or referral for treatment and if they hold themselves out as so doing. That is reflected in the Final Rule at § 2.12(e)(1) with the inclusion of "school-based programs" in the list of entities which may come under the regulations.

An example of how diagnosis affects coverage has been omitted at § 2.12(e)(3)(ii). It is omitted not because the example could never occur under the Final Rule, but because it is very unlikely that a "specialized" program, as program is defined under these regulations, would be treating a patient for a condition which is not related to alcohol or drug abuse such that the reference to a patient's alcohol or drug abuse history would not be related to the condition for which treatment is rendered. Inasmuch as the regulations only apply to programs, this example is more likely to confuse than provide guidance and for that reason has been taken out.

Notifying a Parent or Guardian of a Minor's Application for Treatment

The proposed rule at § 2.14 reorganized and revised but did not substantively amend the existing § 2.15 dealing with the subject of minor patients. Under both the existing and proposed rules, a minor patient's consent is generally required prior to notifying the minor's parent or guardian of his or her application for treatment. This is true even though without notification it is impossible to obtain parental consent in those cases where State law requires a parent, guardian, or other person to consent to alcohol or drug abuse treatment of a minor.

While this issue was not raised in the proposed rule, the Department has received several inquiries on it from the public since the proposed rule was published suggesting that in those States, where the parent's or guardian's consent is needed for the minor's treatment, the program should be free to notify the parent or guardian of the minor's application for treatment without constraint. The Department has considered this issue and decided to

make no substantive changes in the existing section dealing with minor patients.

Although both the current rule and the proposed rule generally prohibit parental notification without the minor's consent, they also provide for an exception. Under this exception such notification would be permitted when, in the program director's judgment, the minor lacks the capacity to make a rational decision on the issue of notification, the situation poses a substantial threat to the physical well-being of the minor or any other person, and this threat may be alleviated by notifying the parent or guardian. Under this provision, the program director is vested with the authority to determine when the circumstances permitting parental notification arise. In discussing the Department's philosophy behind this provision, § 2.15–1(e) of the existing rule states: "It [this provision] is based upon the theory that where a person is actually as well as legally incapable of acting in his own interest, disclosures to a person who is legally responsible for him may be made to the extent that the best interests of the patient clearly so require."

While this exception would not permit parental notification without constraint whenever the program director feels it is appropriate, the Department believes it does provide the program director with significant discretion and does permit parental notification in the most egregious cases where the "best interests of the patient clearly so require." Accordingly, the Department has determined not to make any substantive changes in the manner in which the existing rule handles the issue of parental notification. However, proposed § 2.14 has been revised to clarify that no change in meaning is intended from the current rule.

Finally, it should be noted that this rule in no way compels a program to provide services to a minor without parental consent.

Separation of Clinical from Financial/Administrative Records

The current rules governing research, audit, or evaluation functions by a governmental agency at § 2.53 state that "programs should organize their records so that financial and administrative matters can be reviewed without disclosing clinical information and without disclosing patient identifying information except where necessary for audit verification." The proposed rule transformed this hortatory provision for maintenance of financial/administrative records apart from clinical records into a requirement in § 2.16 dealing with security for written records.

Several commenters predicted that such a requirement will pose an extremely cumbersome burden on programs, perhaps tantamount to requiring maintenance of two systems of files. The Final Rule has adopted the recommendation of those commenters to drop this requirement, primarily on the basis of the potential administrative and recordkeeping problems it poses in the varied treatment settings to which these regulations are applicable.

While it is desirable to withhold clinical information from any research, audit, or program evaluation function for which that clinical information is not absolutely essential, the Final Rule does not require recordkeeping practices designed to guarantee that outcome. The Final Rule does, of course, implement the statutory provisions which prohibits those who receive patient identifying information for the purpose of research, audits, or program evaluation from identifying, directly or indirectly, any individual patient in any report of such research, audit, or evaluation or otherwise disclosing patient identities in any manner (see §§ 2.52(b) and 2.53(d)).

Subpart C—Disclosures with Patient's Consent

Notice to Patients

Like the proposed rule, the Final Rule at § 2.22 requires that notice be given to patients that Federal law and regulations protect the confidentiality of alcohol and drug abuse patient records. The response to this provision in the proposed rule reflects strong support for notifying patients of confidentiality protections, although many stressed that the notice should be simplified in order to be useful rather than confusing to the patient. Some of those who recommended against adoption of a notice provision did so on grounds that the notice as proposed is too complex. Therefore, in response to many who supported the notice provision and those who opposed it on grounds that it is too complex, the Final Rule substantially revises the elements which must be included in the written notice to each patient and accordingly rewrites the sample notice which a program may adopt at its option in fulfillment of the notice requirement.

Form of Written Consent

The proposed rule retains the requirements in § 2.31 of the existing regulations for written consent to disclosure of information which would identify an individual as an alcohol or drug abuser. There was a great deal of support among those who commented on this provision for the retention of the existing elements of written consent on grounds that the present system is working well and that the elements which go to make up written consent are sufficiently detailed to assure an opportunity for a patient to make an informed consent to disclose patient identifying information. Others recommended a more generalized consent form.

The Final Rule retains all elements previously required for written consent, though in one instance it will permit a more general description of the required information. The first of the required elements of written consent in both the existing and proposed rule (§ 2.31 (a)(1)) asks for the name of the program which is to make the disclosure. The Final Rule will amend that element by calling for "(1) The specific name or general designation of the program or person permitted to make the disclosure." This change will permit a patient to consent to disclosure from a category of facilities or from a single specified program. For example, a patient who chooses to authorize disclosure of all his or her records without the necessity of completing multiple consent forms or individually designating each program on a single consent form would consent to disclosure from all programs in which the patient has been enrolled as an alcohol or drug abuse patient. Or, a patient might narrow the scope of his or her consent to disclosure by permitting disclosure from all programs located in a specified city, from all programs operated by a named organization, or as now, the patient might limit consent to disclosure from a single named facility. (In this connection, the Department interprets the existing written consent requirements to permit consent to disclosure of information from many programs in one consent form by listing specifically each of those programs on the form.)

This change generalizes the consent form with respect to only one element without diminishing the potential for a patient's making an informed consent to disclose patient identifying information. The patient is in position to be informed of any programs in which he or she was previously enrolled and from which he or she is willing to have information disclosed.

With regard to deficient written consents, the Final Rule at § 2.31(c) reverts to language from the existing regulations rather than using the language of the proposed rule to express the idea that a disclosure may not be made on the basis of a written consent

which does not contain all required elements in compliance with paragraph (a) of § 2.31. There was no intention in drafting the proposed rule to establish a different or more stringent standard than currently exists prohibiting disclosures without a conforming written consent. Because that was misunderstood by some, the Final Rule will not permit disclosures on the basis of a written consent which, "On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section . . ."

Express Consent to Redisclosure Permitted

Both the existing and proposed rules at § 2.32 prohibit redisclosure by a person who receives information from patient records pursuant to the written consent of the patient and who has been notified that the information is protected by Federal rules precluding redisclosure except as permitted by those Federal rules. However, the statement of the prohibition on redisclosure at § 2.32 does not make evident the Department's interpretation that it is possible for a patient, at the same time consent to disclosure is given, to consent to redisclosure in accordance with the Federal rules. The Final Rule rewords the statement of prohibition on redisclosure and adds the phrase shown in quotes below to the second sentence as follows:

> The Federal rules prohibit you from making any further disclosure of this information "unless further disclosure is expressly permitted by the" written consent of the person to whom it pertains or is otherwise permitted by 42 CFR Part 2.

The purpose of the added phrase is to acknowledge that redisclosure of information may be expressly permitted in the patient's written consent to disclosure. For example, a patient may consent to disclose pertinent information to an employment agency and at the same time permit the employment agency to redisclose this information to potential employers, thus making unnecessary additional consent forms for redisclosures to individual employers. Similarly, a patient may consent to disclose pertient information to an insurance company for the purpose of claiming benefits, and at the same time consent to redisclosure by that insurance company to another organization or company for the purpose of administering the contract under which benefits are claimed by or on behalf of the patient.

Patient Consent to Unrestricted Communications for the Purpose of Criminal Justice System Referrals

Most of those who commented on the revision of § 2.35 generally supported the proposed changes. However, two State commenters encouraged retention of language in the existing regulations which explicitly permits a patient to consent to "unrestricted communications." Otherwise, those commenters say, the revision will act as a deterrent to criminal justice system referrals.

Both the proposed and Final Rule omit most limitations on disclosures to which a patient may consent. The criteria for permitting release of information with patient consent under the Final Rule are: (1) A valid consent under § 2.31 and (2) a determination that the information disclosed is necessary to carry out the purpose for which the consent was given (§ 2.13(a)). Although special rules for disclosures in connection with criminal justice system referrals were retained, they do not restrict "how much and what kind of information" a patient may consent to have disclosed under § 2.31. Section 2.31(a)(5) places no restrictions on how much or what kind of information a patient may consent to have disclosed. That section simply requires that each written consent describe how much and what kind of information the patient consents to have disclosed. A patient may consent to disclosure of any information concerning his or her participation in a program. In the case of a consent for the purpose of a criminal justice system referral, consent to disclose "any information concerning my participation in the program" pursuant to § 2.31(a)(5) would permit "unrestricted communications" from the program to appropriate persons within the criminal justice system to the same extent permitted by the existing rule. Therefore, the Final Rule does not substantively alter § 2.35 as proposed. (Paragraph (c) has been reworded for clarity.)

Subpart D—Disclosures Without Patient's Consent

Elimination of the Requirement to Verify Medical Personnel Status

The proposed regulations at § 2.51 implement the statutory provision which permits a disclosure "to medical personnel to the extent necessary to meet a bona fide medical emergency." The proposed rule added a requirement not contained in the existing § 2.51 that the program make a reasonable effort to verify that the recipient of the information is indeed medical personnel.

The Final Rule deletes the proposed verification requirement in response to comments from several sources that such a requirement is unnecessary, will cause delay, and could possibly impede emergency treatment. In view of those comments and our interest in easing the burden of compliance where possible, the Final Rule does not require verification of the "medical personnel" status of the recipient of information in the face of a medical emergency.

However, the statute permits disclosures only to medical personnel to meet a medical emergency and elimination of the verification requirement does not in any way expand upon the category of persons to whom a disclosure may be made to meet a medical emergency. Neither does elimination of the verification requirement affect the provision in the Final Rule at § 2.51(c) that a program document in the patient's records any disclosure which is made in the face of a medical emergency.

Assessment of Research Risks

The proposed regulations at § 2.52 modified and streamlined existing provisions in §§ 2.52 and 2.53 governing disclosures for scientific research. The proposal clarified that the determination of whether an individual is qualified to conduct scientific research would be left to the program director, and required that such qualified personnel have a research protocol which includes safeguards for storing patient identifying information and prohibits redisclosures except as allowed by these regulations.

The Final Rule adds an additional condition: The program director must ensure that a written statement is furnished by the researcher that the research protocol has been reviewed by an independent group of three or more individuals who found that the rights of patients would be adequately protected and that the potential benefits of the research outweigh any potential risks to patient confidentiality posed by the disclosure of records.

This revision was prompted by comment from both the public and private sectors that review of the research protocol for the purpose of ensuring the protection of human subjects participating in the research (in this case, the patients whose records are proposed for use in research) is imperative prior to permitting disclosure of patient identifying information for the conduct of scientific research. The requirement that researchers state in writing that the protocol has been reviewed for the protection of human subjects will provide an additional point

of reference for the program director in determining whether to release patient identifying information for research purposes.

Researchers who receive support from the Department and many other Federal agencies are required under regulations for the protection of human subjects to obtain review of their protocol from an "institutional review board (IRB)." Such boards generally are set up by the institution employing the researcher. Regulations require that IRBs be composed of persons with professional competence to review research, as well as persons who can judge sensitivity to community attitudes and ethical concerns. Documentation of review and approval by an IRB or by another group of at least three individuals, appropriately constituted to make judgements on issues concerning the protection of human subjects, would meet the new requirement in § 2.52(a)(3).

Audit and Evaluation Activities by Nongovernmental Entities

The proposed regulations at § 2.53 simplify and shorten the provisions on audit and evaluation activities and divide them into two categories: (1) Those activities that do not require copying or removal of patient records, and (2) those that require copying or removal of patient records. The proposed rule permits governmental agencies to conduct audit and evaluation activities in both categories. In addition, if no copying or removal of the records is involved, the program director may determine that other persons are "qualified personnel" for the purpose of conducting audit and evaluation activities. There is no provision for nongovernmental entities to perform any audit or evaluation activity if copying or removal of records is involved.

In response to the proposed rule the Department received comment that third party payers should be permitted to copy or remove records containing patient identifying information as is permitted by governmental agencies that finance or regulate alcohol or drug abuse programs.

Recognizing that private organizations, like governmental agencies, have a stake in the financial and programmatic integrity of treatment programs arising out of their financing of alcohol and drug abuse programs directly, out of peer review responsibilities, and as third party payers, the Final Rule permits access to patient identifying information for audit and evaluation activities by private organizations in circumstances identical to the access afforded governmental agencies. Specifically, if a private organization provides financial assistance to a program, is a third party payer covering patients in the program, or is a peer review organization performing a utilization or quality control review, the Final Rule permits the private organization to have access to patient identifying information for the purpose of participating in audit and evaluation activities to the same extent and under the same conditions as a governmental agency.

Audit and Evaluation of Medicare or Medicaid Programs

In response to specific questions which have come to the Department's attention and in recognition of the continued importance of the integrity of the Medicare and Medicaid programs to the delivery of alcohol and drug abuse services, the Final Rule includes a new paragraph (c) in § 2.53 which clarifies the audit and evaluation provisions as they pertain to Medicare or Medicaid.

Specifically, the new paragraph clarifies that the audit and evaluation function includes investigation for the purpose of administrative enforcement of any remedy imposed by law by any Federal, State, or local agency which has responsibility for oversight of the Medicare or Medicaid programs. The new paragraph makes explicit that the term "program" includes employees of or providers of medical services under an alcohol or drug abuse program. Finally, it clarifies that a peer review organization may communicate patient identifying information for the purpose of a Medicare or Medicaid audit or evaluation to the agency responsible for oversight of the Medicare or Medicaid program being evaluated or audited.

Subpart E—Court Orders Authorizing Disclosure and Use

Court-Ordered Disclosure of Confidential Communications

The existing regulations at § 2.63 limit a court order to "objective" data and prohibit court-ordered disclosure of "communications by a patient to personnel of the program." The proposed regulations delete the provision restricting a court order to objective data and precluding an order from reaching "communications by a patient to personnel of the program." Deletion of that provision provoked considerable discussion and concern on the part of a large number of persons, 85% of whom opposed allowing court-ordered disclosure of nonobjective data.

The Final Rule at § 2.63 restores protection for many "communications by a patient to personnel of the program" and information which is of a nonobjective nature, but it does not protect that information from court order in the face of an existing threat to a third party or in connection with an investigation or prosecution of an extremely serious crime.

Because the existing regulations seem to be dealing uniformly with two related but not necessarily identical types of information, i.e., "objective" data and "communications by a patient to personnel of the program," the Final Rule drops those terms in favor of the term "confidential communications," a term in use since 1975 in existing § 2.63–1. "Confidential communications" are the essence of those matters to be afforded protection and are as readily identified as "objective" data. Furthermore, protection of "confidential communications" is more relevant to maintaining patient trust in a program than is protection of "communications by a patient to personnel of the program," a term which does not distinguish between the innocuous and the highly sensitive communication.

Most comments in opposition to relaxing the court order limitations on confidential communications said that the potential for court-ordered disclosure of confidential communications will compromise the therapeutic environment, may deter some alcohol and drug abusers from entering treatment, and will yield information which may be readily misinterpreted or abused.

While freedom to be absolutely candid in communicating with an alcohol or drug abuse program may have therapeutic benefits and may be an incentive to treatment, it is the position of the Department that those therapeutic benefits cannot take precedence over two circumstances which merit court-ordered disclosure of confidential communications.

The first of these is a circumstance in which the patient poses a threat to any third party. Existing rules do not permit a court to authorize disclosure of any communication by a patient to a program; for example, that the patient is abusing a child or has expressed an intention to kill or seriously harm another person. The balance between patient confidentiality and an existing threat posed by the patient to life or of serious bodily injury to another person must be weighted in favor of permitting a court to order disclosure of confidential communications which are necessary to protect against such an existing threat.

The second of these circumstance is one in which a patient's confidential

communications to a program are necessary in connection with investigation or prosecution of an extremely serious crime, such as a crime which directly threatens loss of life or serious bodily injury. The Department takes the position that it is consistent with the intent of Congress and in the best interest of the Nation to permit the exercise of discretion by a court, within the context of the confidentiality law and regulations, to determine whether to authorize disclosure or use of confidential communications from a patient's treatment record in connection with such an investigation or prosecution.

Our aim is to strike a balance between absolute confidentiality for "confidential communications" on one side and on the other, to protect against any existing threat to life or serious bodily harm to others and to bring to justice those being investigated or prosecuted for an extremely serious crime who may have inflicted such harm in the past. While many confidential communications will remain beyond the reach of a court order, revised § 2.63 of the Final Rule will permit a court to authorize disclosure of confidential communications if the disclosure is neccessary to protect against an existing threat to life or serious bodily injury, if disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, or, as in the existing rule, if disclosure is in connection with a legal proceeding in which the patient himself/herself offers testimony or evidence concerning the confidential communications.

Open Hearing on Patient Request in Connection with a Court Order

Courts authorizing disclosure for noncriminal purposes are required at § 2.64(c) of the Final Rule to conduct any oral argument, review of evidence, or hearing in the judge's chambers or in some manner that ensures patient identifying information is not disclosed to anyone who is not a party to the proceeding, to a party holding the record, or to the patient. The existing rules provide that a patient may request an open hearing. The proposed rule did not provide for the patient to request an open hearing.

The existing and proposed rule provides that a patient may consent to use of his or her name rather than a fictitious name in any application for an order authorizing disclosure for noncriminal purposes. The existing rule requires "voluntary and intelligent" consent. The proposed rule ensures the quality of the consent by requiring that it be in writing and in compliance with § 2.31.

Upon reconsideration, the Department has reinstated the provision permitting a patient to consent to an open hearing in a noncriminal proceeding but with the same formality as is required by the proposed rule for a consent by the patient to use his or her name in an application for an order. Therefore, the Final Rule at § 2.64(c) requires that any hearing be held in such a way as to maintain the patient's confidentiality "unless the patient requests an open hearing in a manner which meets the written consent requirements of these regulations."

Content of Court Order—Sealing of Record as an Example

The content of a court order authorizing disclosure for noncriminal purposes and any order for disclosure and use to investigate or prosecute a program or the person holding the records is limited at § 2.64(e) to essential information and limits disclosure to those persons who have a need for the information. In addition, the court is required to take such other measures as are necessary to limit disclosure to protect the patient, the physician-patient relationship, and the treatment services. We have included at § 2.64(e)(3) an example of one such measure which may be necessary: sealing the record of any proceeding for which disclosure of a patient's records has been ordered. It is the Department's experience that heightened awareness of this possibility by members of the treatment community and legal profession can limit dissemination of patient identifying information to those for whom the court determined "good cause" exists without turning all or a part of a patient's treatment record into public information. The Final Rule adds as an example of a measure which the court might take to protect the patient, the physician-patient relationship and the treatment service "sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered." A similar change has also been made in § 2.67(d)(4).

Extremely Serious Crime as a Criterion for a Court Order to Investigate or Prosecute a Patient

The proposed rule at § 2.64 purported to retain the existing standard with regard to court orders which may be issued for the purpose of investigating or prosecuting a patient; i.e., the standard that no court order may authorize disclosure and use of patient records for investigation or prosecution of nonserious crimes. In an effort to clarify the nature of those crimes for which a court may order disclosure and use of patient records to investigate or prosecute the patient, the proposed rule dropped the term "extremely serious" crime in favor of a more specific functional definition of a crime which "causes or directly threatens loss of life or serious bodily injury." While the proposed rule purported to retain the existing standard, comments received from law enforcement agencies have contested that outcome, asserting that the criterion as proposed would be significantly narrowed. Arguing in favor of a broader standard, law enforcement interests advocated a more flexible criterion which would permit courts to weigh relevant factors on a case-by-case basis.

Inasmuch as the change in the proposed rule was intended to clarify—not to further limit—those crimes for which a court may authorize use of a patient's record to investigate or prosecute the patient, the Final Rule reinstates the existing language, "extremely serious." This broader criterion will permit more flexibility and discretion by the courts in deciding whether a crime is of a caliber which merits use of a patient's treatment record to investigate or prosecute the patient.

The Final Rule names as examples of "extremely serious" crimes homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect. Deleted from the list of proposed examples is "sale of illicit drugs."

Based on the view that most patients in drug abuse treatment are vulnerable to a charge of sale of illicit drugs, many commenters asked that "sale of illicit drugs" not be categorically named as an extremely serious crime. To do so, they asserted, would make almost all patients in drug rehabilitation or treatment programs vulnerable to investigation or prosecution by means of court-ordered use of their own treatment records.

While the Final Rule eliminates "sale of illicit drugs" as an example of an extremely serious crime, it does not alter the authority of a court to find that under appropriate circumstances sale of an illicit drug is, in fact, an extremely serious crime, and it reflects a decision to leave any such determination up to a court of competent jurisdiction which is called upon to order the use of a patient's treatment records to prosecute the patient in view of any circumstances known to the court.

New Law To Permit Reporting of Child Abuse and Neglect

Section 106 of Pub. L. 99–401, the Children's Justice and Assistance Act of 1986, amends sections 523(e) and 527(e) of the Public Health Service Act (42 U.S.C. 290dd–3(e) and 42 U.S.C. 290ee–3(e)) to permit the reporting of suspected child abuse and neglect to appropriate State or local authorities in accordance with State law. The amended sections of the Public Health Service Act provide:

> The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

This newly enacted statutory exception to the restrictions on disclosure of information which would identify an alcohol or drug abuse patient provides a straightforward avenue for making reports of incidents of suspected child abuse and neglect in accordance with State law without resort to devices explained in the preamble to the proposed rule, i.e., obtaining a court order, reporting without identifying the patient as an alcohol or drug abuser, getting the patient's written consent, entering into a qualified service organization agreement, or reporting a medical emergency to medical personnel. While the potential still exists for using the devices described in the proposed rule, there is no foreseeable reason to use them to report suspected child abuse and neglect in view of the amendment.

Although the new law excepts reports of suspected child abuse and neglect from the statutory restrictions on disclosure and use, it does not affect the applicability of the restrictions to the original alcohol and drug abuse patient record maintained by the program. Accordingly, if, following a report of suspected child abuse or neglect, the appropriate State authorities wish to subpoena patient records (or program personnel to testify about patient records) for civil or criminal proceedings relating to the child abuse or neglect, appropriate authorization would be required under the statutes and regulations. While written patient consent would suffice for a civil proceeding, it would be necessary to obtain an authorizing court order under paragraph (b)(2)(C) of the confidentality statutes and § 2.65 of the regulations for use of the record to criminally investigate or prosecute a patient.

Editorial Changes

The Final Rule makes very few editorial or clarifying changes to the regulations as proposed.

Number, tense, punctuation, and sequential numbering are changed where appropriate. Definitions applicable only to prevention of multiple enrollments in detoxification and maintenance treatment programs are moved from the definitions section to § 2.34. Section 2.35(c) has been rewritten for clarity. A clarifying phrase or word is added to the definition of "patient identifying information" at § 2.11, to § 2.19 (a)(1) and (b)(1) and to § 2.31(a)(8). The phrase "or other" has been added to § 2.53(c) because a court order under § 2.66 may be issued to investigate a program for criminal or administrative purposes. At § 2.65(d)(3) alternative language is adopted consistent with language used elsewhere to express a similar thought. At § 2.65 (d)(4) the term "program" is used in lieu of "person holding the records" inasmuch as none but a program will be providing services to patients.

Regulatory Procedures

Executive Order 12291

This is not a major rule under Executive Order 12291. Overall costs to general medical care facilities will be reduced as a result of the decision to apply the regulations only to specialized alcohol and drug abuse treatment programs. Cost to covered programs will be reduced somewhat by simplification of the rules. The amendments do not have an annual effect on the economy of $100 million or more or otherwise meet the criteria for a major rule under the Executive Order. Thus, no regulatory analysis is required.

Regulatory Flexibility Act

As a result of the decision to apply the regulations only to specialized alcohol and drug abuse treatment programs, the Final Rule will not have a significant economic impact on a substantial number of small entities. The regulations will no longer apply to general medical care providers which render alcohol or drug abuse services incident to their general medical care functions; thus, the number of small entities affected will be less than substantial. The economic impact will be less than significant because much of that impact arises from the cost of determining that the records of a general medical care patient are subject to the regulations and thereafter treating those records differently than all others in the general medical care facility. It is anticipated that programs covered by these rules will realize a small savings as a result of the simplification of the rules.

Information Collection Requirements

Information collection requirements in this Final Rule are:

(1) Obtaining written patient consent (§ 2.31(a)),

(2) Notifying each patient of confidentiality provisions (§ 2.22), and

(3) Documenting any disclosure to meet a medical emergency (§ 2.51).

The information collection requirements contained in these final regulations have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned control number 0930–0099, approved for use through April 30, 1989.

List of Subjects in 42 CFR Part 2

Alcohol abuse, Alcoholism, Confidentiality, Drug abuse, Health records, Privacy.

Dated: July 3, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: April 9, 1987.

Otis R. Bowen,

Secretary.

The amendments to 42 CFR Part 2 are hereby adopted as revised and set forth below:

PART 2—CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS

Subpart A—Introduction

Sec.

2.1 Statutory authority for confidentiality of drug abuse patient records.
2.2 Statutory authority for confidentiality of alcohol abuse patient records.
2.3 Purpose and effect.
2.4 Criminal penalty for violation.
2.5 Reports of violations.

Subpart B—General Provisions

2.11 Definitions.
2.12 Applicability.
2.13 Confidentiality restrictions.
2.14 Minor patients.
2.15 Incompetent and deceased patients.
2.16 Security for written records.
2.17 Undercover agents and informants.
2.18 Restrictions on the use of identification cards.
2.19 Disposition of records by discontinued programs.
2.20 Relationship to State laws.
2.21 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.
2.22 Notice to patients of Federal confidentiality requirements.
2.23 Patient access and restriction on use.

Subpart C—Disclosures With Patient's Consent

Sec.
2.31 Form of written consent.
2.32 Prohibition on redisclosure.
2.33 Disclosures permitted with written consent.
2.34 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs.
2.35 Disclosures to elements of the criminal justice system which have referred patients.

Subpart D—Disclosures Without Patient Consent

2.51 Medical emergencies.
2.52 Research activities.
2.53 Audit and evaluation activities.

Subpart E—Court Orders Authorizing Disclosures and Use

2.61 Legal effect of order.
2.62 Order not applicable to records disclosed without consent to researchers auditors and evaluators.
2.63 Confidential communications.
2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.
2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.
2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a program or the person holding the records.
2.67 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of a program.

Authority: Sec. 408 of Pub. L. 92–255, 86 Stat. 79, as amended by sec. 303 (a), (b) of Pub. L. 93–282, 83 Stat. 137, 138; sec. 4(c)(5)(A) of Pub. L. 94–237, 90 Stat. 244; sec. 111(c)(3) of Pub. L. 94–581, 90 Stat. 2852; sec. 509 of Pub. L. 96–88, 93 Stat. 695; sec. 973(d) of Pub. L. 97–35, 95 Stat. 598; and transferred to sec. 527 of the Public Health Service Act by sec. 2(b)(16)(B) of Pub. L. 98–24, 97 Stat. 182 and as amended by sec. 106 of Pub. L. 99–401, 100 Stat. 907 (42 U.S.C. 290ee–3) and sec. 333 of Pub. L. 91–616, 84 Stat. 1853, as amended by sec. 122(a) of Pub. L. 93–282, 88 Stat. 131; and sec. 111(c)(4) of Pub. L. 94–581, 90 Stat. 2852 and transferred to sec. 523 of the Public Health Service Act by sec. 2(b)(13) of Pub. L. 98–24, 97 Stat. 181 and as amended by sec. 106 of Pub. L. 99–401, 100 Stat. 907 (42 U.S.C. 290dd–3).

Subpart A—Introduction

§ 2.1 Statutory authority for confidentiality of drug abuse patient records.

The restrictions of these regulations upon the disclosure and use of drug abuse patient records were initially authorized by section 408 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. 1175). That section as amended was transferred by Pub. L. 98–24 to section 527 of the Public Health Service Act which is codified at 42 U.S.C. 290ee–3. The amended statutory authority is set forth below:

Section 290ee–3. Confidentiality of patient records.

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse prevention function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of records; report of suspected child abuse and neglect to State or local authorities

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Regulations; interagency consultations; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section, the Secretary, after consultation with the Administrator of Veterans' Affairs and the heads of other Federal departments and agencies substantially affected thereby, shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Subsection (h) was superseded by section 111(c)(3) of Pub. L. 94–581. The responsibility of the Administrator of Veterans' Affairs to write regulations to provide for confidentiality of drug abuse patient records under Title 38 was moved from 21 U.S.C. 1175 to 38 U.S.C. 4134.)

§ 2.2 Statutory authority for confidentiality of alcohol abuse patient records.

The restrictions of these regulations upon the disclosure and use of alcohol abuse patient records were initially authorized by section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4582). The section as amended was transferred by Pub. L. 98–24 to section 523 of the Public Health Service Act

which is codified at 42 U.S.C. 290dd–3. The amended statutory authority is set forth below:

Section 290dd–3. Confidentiality of patient records

(a) Disclosure authorization

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Purposes and circumstances of disclosure affecting consenting patient and patient regardless of consent

(1) The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives his written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Prohibition against use of record in making criminal charges or investigation of patient

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Continuing prohibition against disclosure irrespective of status as patient

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he ceases to be a patient.

(e) Armed Forces and Veterans' Administration; interchange of record of suspected child abuse and neglect to State or local authorities

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Veterans' Administration furnishing health care to veterans, or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalty for first and subsequent offenses

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

(g) Regulations of Secretary; definitions, safeguards, and procedures, including procedures and criteria for issuance and scope of orders

Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. These regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection(b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Subsection (h) was superseded by section 111(c)(4) of Pub. L. 94–581. The responsibility of the Administrator of Veterans' Affairs to write regulations to provide for confidentiality of alcohol abuse patient records under Title 38 was moved from 42 U.S.C. 4582 to 38 U.S.C. 4134.)

§ 2.3 Purpose and effect.

(a) *Purpose.* Under the statutory provisions quoted in §§ 2.1 and 2.2, these regulations impose restrictions upon the disclosure and use of alcohol and drug abuse patient records which are maintained in connection with the performance of any federally assisted alcohol and drug abuse program. The regulations specify:

(1) Definitions, applicability, and general restrictions in Subpart B (definitions applicable to § 2.34 only appear in that section);

(2) Disclosures which may be made with written patient consent and the form of the written consent in Subpart C;

(3) Disclosures which may be made without written patient consent or an authorizing court order in Subpart D; and

(4) Disclosures and uses of patient records which may be made with an authorizing court order and the procedures and criteria for the entry and scope of those orders in Subpart E.

(b) *Effect.* (1) These regulations prohibit the disclosure and use of patient records unless certain circumstances exist. If any circumstances exists under which disclosure is permitted, that circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. Thus, the regulations do not require disclosure under any circumstances.

(2) These regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. They are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

(3) Because there is a criminal penalty (a fine—see 42 U.S.C. 290ee–3(f), 42 U.S.C. 290dd–3(f) and 42 CFR § 2.4) for violating the regulations, they are to be construed strictly in favor of the potential violator in the same manner as a criminal statute (see *M. Kraus & Brothers* v. *United States*, 327 U.S. 614, 621–22, 66 S. Ct. 705, 707–08 (1946)).

§ 2.4 Criminal penalty for violation.

Under 42 U.S.C. 290ee–3(f) and 42 U.S.C. 290dd–3(f), any person who violates any provision of those statutes or these regulations shall be fined not more than $500 in the case of a first offense, and not more than $5,000 in the case of each subsequent offense.

§ 2.5 Reports of violations.

(a) The report of any violation of these regulations may be directed to the United States Attorney for the judicial district in which the violation occurs.

(b) The report of any violation of these regulations by a methadone program may be directed to the Regional Offices of the Food and Drug Administration.

Subpart B—General Provisions

§ 2.11 Definitions.

For purposes of these regulations:

Alcohol abuse means the use of an alcoholic beverage which impairs the

physical, mental, emotional, or social well-being of the user.

Drug abuse means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

Diagnosis means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse which is made for the purpose of treatment or referral for treatment.

Disclose or disclosure means a communication of patient indentifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

Informant means an individual:

(a) Who is a patient or employee of a program or who becomes a patient or employee of a program at the request of a law enforcement agency or official: and

(b) Who at the request of a law enforcement agency or official observes one or more patients or employees of the program for the purpose of reporting the information obtained to the law enforcement agency or official.

Patient means any individual who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program and includes any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a program.

Patient identifying information means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a program, if that number does not consist of, or contain numbers (such as a social security, or driver's license number) which could be used to identify a patient with reasonable accuracy and speed from sources external to the program.

Person means an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity.

Program means a person which in whole or in part holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment, or referral for treatment. For a general medical care facility or any part thereof to be a program, it must have:

(a) An identified unit which provides alcohol or drug abuse diagnosis, treatment, or referral for treatment or

(b) Medical personnel or other staff whose primary function is the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment and who are identified as such providers.

Program director means:

(a) In the case of a program which is an individual, that individual:

(b) In the case of a program which is an organization, the individual designated as director, managing director, or otherwise vested with authority to act as chief executive of the organization.

Qualified service organization means a person which:

(a) Provides services to a program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy, and

(b) Has entered into a written agreement with a program under which that person:

(1) Acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the progams, it is fully bound by these regulations; and

(2) If necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

Records means any information, whether recorded or not, relating to a patient received or acquired by a federally assisted alcohol or drug program.

Third party payer means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his family or on the basis of the patient's eligibility for Federal, State, or local governmental benefits.

Treatment means the management and care of a patient suffering from alcohol or drug abuse, a condition which is identified as having been caused by that abuse, or both, in order to reduce or eliminate the adverse effects upon the patient.

Undercover agent means an officer of any Federal, State, or local law enforcement agency who enrolls in or becomes an employee of a program for the purpose of investigating a suspected violation of law or who pursues that purpose after enrolling or becoming employed for other purposes.

§ 2.12 Applicability.

(a) *General*—(1) *Restrictions on disclosure.* The restrictions on disclosure in these regulations apply to any information, whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

(ii) Is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date) for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.

(2) *Restriction on use.* The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient (42 U.S.C. 290ee–3(c), 42 U.S.C. 290dd–3(c)) applies to any information, whether or not recorded which is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date), for the purpose of treating alcohol or drug abuse, making a diagnosis for the treatment, or making a referral for the treatment.

(b) *Federal assistance.* An alcohol abuse or drug abuse program is considered to be federally assisted if:

(1) It is conducted in whole or in part, whether directly or by contract or otherwise by any department or agency of the United States (but see paragraphs (c)(1) and (c)(2) of this section relating to the Veterans' Administration and the Armed Forces);

(2) It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States including but not limited to:

(i) Certification of provider status under the Medicare program;

(ii) Authorization to conduct methadone maintenance treatment (see 21 CFR 291.505); or

(iii) Registration to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of alcohol or drug abuse;

(3) It is supported by funds provided by any department or agency of the United States by being:

(i) A recipient of Federal financial assistance in any form, including financial assistance which does not directly pay for the alcohol or drug abuse diagnosis, treatment, or referral activities; or

(ii) Conducted by a State or local government until which, through general or special revenue sharing or other forms of assistance, receives Federal funds which could be (but are not necessarily) spent for the alcohol or drug abuse program; or

(4) It is assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.

(c) *Exceptions*—(1) *Veterans' Administration.* These regulations do not apply to information on alcohol and drug abuse patients maintained in connection with the Veterans' Administraton provisions of hospital care, nursing home care, domiciliary care, and medical services under Title 38, United States Code. Those records are governed by 38 U.S.C. 4132 and regulations issued under that authority by the Administrator of Veterans' Affairs.

(2) *Armed Forces.* These regulations apply to any information described in paragraph (a) of this section which was obtained by any component of the Armed Forces during a period when the patient was subject to the Uniform Code of Military Justice except:

(i) Any interchange of that information within the Armed Forces; and

(ii) Any interchange of that information between the Armed Forces and those components of the Veterans Administration furnishing health care to veterans.

(3) *Communication within a program or between a program and an entity having direct administrative control over that program.* The restrictions on disclosure in these regulations do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of alcohol or drug abuse if the communications are

(i) within a program or

(ii) between a program and an entity that has direct administrative control over the program.

(4) *Qualified Service Organizations.* The restrictions on disclosure in these regulations do not apply to communications between a program and a qualified service organization of information needed by the organization to provide services to the program.

(5) *Crimes on program premises or against program personnel.* The restrictions on disclosure and use in these regulations do not apply to communications from program personnel to law enforcement officers which—

(i) Are directly related to a patient's commission of a crime on the premises of the program or against program personnel or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.

(6) *Reports of suspected child abuse and neglect.* The restrictions on disclosure and use in these regulations do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities. However, the restrictions continue to apply to the original alcohol or drug abuse patient records maintained by the program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.

(d) *Applicability to recipients of information*—(1) *Restriction on use of information.* The restriction on the use of any information subject to these regulations to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from a federally assisted alcohol or drug abuse program, regardless of the status of the person obtaining the information or of whether the information was obtained in accordance with these regulations. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see § 2.17) or through patient access (see § 2.23) is subject to the restriction on use.

(2) *Restrictions on disclosures—Third party payers, administrative entities, and others.* The restrictions on disclosure in these regulations apply to:

(i) Third party payers with regard to records disclosed to them by federally assisted alcohol or drug abuse programs;

(ii) Entities having direct administrative control over programs with regard to information communicated to them by the program under § 2.12(c)(3); and

(iii) Persons who receive patient records directly from a federally assisted alcohol or drug abuse program and who are notified of the restrictions on redisclosure of the records in accordance with § 2.32 of these regulations.

(e) *Explanation of applicability*—(1) *Coverage.* These regulations cover any information (including information on referral and intake) about alcohol and drug abuse patients obtained by a program (as the terms "patient" and "program" are defined in § 2.11) if the program is federally assisted in any manner described in § 2.12(b). Coverage includes, but is not limited to, those treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-based programs, and private practitioners who hold themselves out as providing, and provide alcohol or drug abuse diagnosis, treatment, or referral for treatment.

(2) *Federal assistance to program required.* If a patient's alcohol or drug abuse diagnosis, treatment, or referral for treatment is not provided by a program which is federally conducted, regulated or supported in a manner which constitutes Federal assistance under § 2.12(b), that patient's record is not covered by these regulations. Thus, it is possible for an individual patient to benefit from Federal support and not be covered by the confidentiality regulations because the program in which the patient is enrolled is not federally assisted as defined in § 2.12(b). For example, if a Federal court placed an individual in a private for-profit program and made a payment to the program on behalf of that individual, that patient's record would not be covered by these regulations unless the program itself received Federal assistance as defined by § 2.12(b).

(3) *Information to which restrictions are applicable.* Whether a restriction is on use or disclosure affects the type of information which may be available. The restrictions on disclosure apply to any information which would identify a

patient as an alcohol or drug abuser. The restriction on use of information to bring criminal charges against a patient for a crime applies to any information obtained by the program for the purpose of diagnosis, treatment, or referral for treatment of alcohol or drug abuse. (Note that restrictions on use and disclosure apply to recipients of information under § 2.12(d).)

(4) *How type of diagnosis affects coverage.* These regulations cover any record of a diagnosis identifying a patient as an alcohol or drug abuser which is prepared in connection with the treatment or referral for treatment of alcohol or drug abuse. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by these regulations. The following are not covered by these regulations:

(i) diagnosis which is made solely for the purpose of providing evidence for use by law enforcement authorities; or

(ii) A diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

§ 2.13 Confidentiality restrictions.

(a) *General.* The patient records to which these regulations apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) *Unconditional compliance required.* The restrictions on disclosure and use in these regulations apply whether the holder of the information believes that the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by these regulations.

(c) *Acknowledging the presence of patients: Responding to requests.* (1) The presence of an identified patient in a facility or component of a facility which is publicly identified as a place where only alcohol or drug abuse diagnosis, treatment, or referral is provided may be acknowledged only if the patient's written consent is obtained in accordance with subpart C of these regulations or if an authorizing court order is entered in accordance with Subpart E of these regulations. The regulations permit acknowledgement of the presence of an identified patient in a facility or part of a facility if the facility is not publicy identified as only an alcohol or drug abuse diagnosis, treatment or referral facility, and if the acknowledgement does not reveal that the patient is an alcohol or drug abuser.

(2) Any answer to a request for a disclosure of patient records which is not permissible under these regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for alcohol or drug abuse. An inquiring party may be given a copy of these regulations and advised that they restrict the disclosure of alcohol or drug abuse patient records, but may not be told affirmatively that the regulations restrict the disclosure of the records of an identified patient. The regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

§ 2.14 Minor patients.

(a) *Definition of minor.* As used in these regulations the term "minor" means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) *State law not requiring parental consent to treatment.* If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under Subpart C of these regulations may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a State or local law requiring the program to furnish the service irrespective of ability to pay.

(c) *State law requiring parental consent to treatment.* (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under Subpart C of these regulations must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with Subpart C of these regulations or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the program director under paragraph (d) of this section.

(d) *Minor applicant for services lacks capacity for rational choice.* Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the program director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under Subpart C of these regulations to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf.

§ 2.15 Incompetent and deceased patients.

(a) *Incompetent patients other than minors*—(1) *Adjudication of incompetence.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under these regulations may be given by the guardian or other person authorized under State law to act in the patient's behalf.

(2) *No adjudication of incompetency.* For any period for which the program director determines that a patient, other than a minor or one who has been adjudicated incompetent, suffers from a medical condition that prevents knowing or effective action on his or her own behalf, the program director may exercise the right of the patient to consent to a disclosure under Subpart C of these regulations for the sole purpose

of obtaining payment for services from a third party payer.

(b) *Deceased patients*—(1) *Vital statistics.* These regulations do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative.* Any other disclosure of information identifying a deceased patient as an alcohol or drug abuser is subject to these regulations. If a written consent to the disclosure is required, that consent may be given by an executor, administrator, or other personal representative appointed under applicable State law. If there is no such appointment the consent may be given by the patient's spouse or, if none, by any responsible member of the patient's family.

§ 2.16 Security for written records.

(a) Written records which are subject to these regulations must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use; and

(b) Each program shall adopt in writing procedures which regulate and control access to and use of written records which are subject to these regulations.

§ 2.17 Undercover agents and informants.

(a) *Restrictions on placement.* Except as specifically authorized by a court order granted under § 2.6 of these regulations, no program may knowingly employ, or enroll as a patient, any undercover agent or informant.

(b) *Restriction on use of information.* No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is place in a program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient.

§ 2.18 Restrictions on the use of identification cards.

No person may require any patient to carry on his or her person while away from the program premises any card or other object which would identify the patient as an alcohol or drug abuser. This section does not prohibit a person from requiring patients to use or carry cards or other identification objects on the premises of a program.

§ 2.19 Disposition of records by discontinued programs.

(a) *General.* If a program discontinues operations or is taken over or acquired by another program, it must purge patient identifying information from its records or destroy the records unless—

(1) The patient who is the subject of the records gives written consent (meeting the requirements of § 2.31) to a transfer of the records to the acquiring program or to any other program designated in the consent (the manner of obtaining this consent must minimize the likelihood of a disclosure of patient identifying information to a third party); or

(2) There is a legal requirement that the records be kept for a period specified by law which does not expire until after the discontinuation or acquisition of the program.

(b) *Procedure where retention period required by law.* If paragraph (a)(2) of this section applies, the records must be:

(1) Sealed in envelopes or other containers labeled as follows: "Records of [insert name of program] required to be maintained under [insert citation to statute, regulation, court order or other legal authority requiring that records be kept] until a date not later than [insert appropriate date]"; and

(2) Held under the restrictions of these regulations by a responsible person who must, as soon as practicable after the end of the retention period specified on the label, destroy the records.

§ 2.20 Relationship to State laws.

The statutes authorizing these regulations (42 U.S.C. 290ee–3 and 42 U.S.C. 290dd–3) do not preempt the field of law which they cover to the exclusion of all State laws in that field. If a disclosure permitted under these regulations is prohibited under State law, neither these regulations nor the authorizing statutes may be construed to authorize any violation of that State law. However, no State law may either authorize or compel any disclosure prohibited by these regulations.

§ 2.21 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.

(a) *Research privilege description.* There may be concurrent coverage of patient identifying information by these regulations and by administrative action taken under: Section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a) and the implementing regulations at 42 CFR Part 2a); or section 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These "research privilege" statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) *Effect of concurrent coverage.* These regulations restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under Subpart E of these regulations of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilage granted under 21 CFR 291.505(g) to treatment programs using methadone for maintenance treatment does not protect from compulsory disclosure any imformation which is permitted to be disclosed under those regulations. Thus, if a court order entered in accordance with Subpart E of these regulations authorizes a methadone maintenance treatment program to disclose certain information about its patients, that program may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

§ 2.22 Notice to patients of Federal confidentiality requirements.

(a) *Notice required.* At the time of admission or as soon threreafter as the patient is capable of rational communication, each program shall:

(1) Communicate to the patient that Federal law and regulations protect the confidentiality of alcohol and drug abuse patient records; and

(2) Give to the patient a summary in writing of the Federal law and regulations.

(b) *Required elements of written summary.* The written summary of the Federal law and regulations must include:

(1) A general description of the limited circumstances under which a program may acknowledge that an individual is present at a facility or disclose outside the program information identifying a patient as an alcohol or drug abuser.

(2) A statement that violation of the Federal law and regulations by a program is a crime and that suspected violations may be reported to appropriate authorities in accordance with these regulations.

(3) A statement that information related to a patient's commission of a crime on the premises of the program or

against personnel of the program is not protected.

(4) A statement that reports of suspected child abuse and neglect made under State law to appropriate State or local authorities are not protected.

(5) A citation to the Federal law and regulations.

(c) *Program options.* The program may devise its own notice or may use the sample notice in paragraph (d) to comply with the requirement to provide the patient with a summary in writing of the Federal law and regulations. In addition, the program may include in the written summary information concerning State law and any program policy not inconsistent with State and Federal law on the subject of confidentiality of alcohol and drug abuse patient records.

(d) *Sample notice.*

Confidentiality of Alcohol and Drug Abuse Patient Records

The confidentiality of alcohol and drug abuse patient records maintained by this program is protected by Federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser *Unless:*

(1) The patient consents in writing;

(2) The disclosure is allowed by a court order; or

(3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under State law to appropriate State or local authorities.

(See 42 U.S.C. 290dd–3 and 42 U.S.C. 290ee–3 for Federal laws and 42 CFR Part 2 for Federal regulations.)

(Approved by the Office of Management and Budget under Control No. 0930–0099.)

§ 2.23 Patient access and restrictions on use.

(a) *Patient access not prohibited.* These regulations do not prohibit a program from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that the program maintains about the patient. The program is not required to obtain a patient's written consent or other authorization under these regulations in order to provide such access to the patient.

(b) *Restriction on use of information.* Information obtained by patient access to his or her patient record is subject to the restriction on use of his information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 2.12(d)(1).

Subpart C—Disclosures With Patient's Consent

§ 2.31 Form of written consent.

(a) *Required elements.* A written consent to a disclosure under these regulations must include:

(1) The specific name or general designation of the program or person permitted to make the disclosure.

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose of the disclosure.

(5) How much and what kind of information is to be disclosed.

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 2.14; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 2.15 in lieu of the patient.

(7) The date on which the consent is signed.

(8) A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) *Sample consent form.* The following form complies with paragraph (a) of this section, but other elements may be added.

1. I (name of patient) ☐ Request ☐ Authorize:

2. (name or general designation of program which is to make the disclosure)

3. To disclose: (kind and amount of information to be disclosed)

4. To: (name or title of the person or organization to which disclosure is to be made)

5. For (purpose of the disclosure)

6. Date (on which this consent is signed)

7. Signature of patient

8. Signature of parent or guardian (where required)

9. Signature of person authorized to sign in lieu of the patient (where required)

10. This consent is subject to revocation at any time except to the extent that the program which is to make the disclosure has already taken action in reliance on it. If not previously revoked, this consent will terminate upon: (specific date, event, or condition)

(c) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through a reasonable effort could be known, by the person holding the records to be materially false.

(Approved by the Office of Management and Budget under Control No. 0930–0099.)

§ 2.32 Prohibition on redisclosure.

(a) *Notice to accompany disclosure.* Each disclosure made with the patient's written consent must be accompanied by the following written statement:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

§ 2.33 Disclosures permitted with written consent.

If a patient consents to a disclosure of his or her records under § 2.31, a program may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of § 2.34 and 2.35, respectively.

§ 2.34 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs.

(a) *Definitions.* For purposes of this section:

Central registry means an organization which obtains from two or more member progams patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.

Detoxification treatment means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

Maintenance treatment means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

Member program means a detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

(b) *Restrictions on disclosure.* A program may disclose patient records to a central registry or to any detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:

(i) The patient is accepted for treatment;

(ii) The type or dosage of the drug is changed; or

(iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:

(i) Patient identifying information:

(ii) Type and dosage of the drug; and

(iii) Relevant dates.

(3) The disclosure is made with the patient's written consent meeting the requirements of § 2.31, except that:

(i) The consent must list the name and address of each central registry and each known detoxification or maintenance treatment program to which a disclosure will be made; and

(ii) The consent may authorize a disclosure to any detoxification or maintenance treatment program established within 200 miles of the program after the consent is given without naming any such program.

(c) *Use of information limited to prevention of multiple enrollments.* A central registry and any detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under Subpart E of these regulations.

(d) *Permitted disclosure by a central registry to prevent a multiple enrollment.* When a member program asks a central registry if an identified patient is enrolled in another member program and the registry determines that the patient is so enrolled, the registry may disclose—

(1) The name, address, and telephone number of the member program(s) in which the patient is already enrolled to the inquiring member program; and

(2) The name, address, and telephone number of the inquiring member program to the member program(s) in which the patient is already enrolled. The member programs may communicate as necessary to verify that no error has been made and to prevent or eliminate any multiple enrollment.

(e) *Permitted disclosure by a detoxification or maintenance treatment program to prevent a multiple enrollment.* A detoxification or maintenance treatment program which has received a disclosure under this section and has determined that the patient is already enrolled may communicate as necessary with the program making the disclosure to verify that no error has been made and to prevent or eliminate any multiple enrollment.

§ 2.35 Disclosures to elements of the criminal justice system which have referred patients.

(a) A program may disclose information about a patient to those persons within the criminal justice system which have made participation in the program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:

(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and

(2) The patient has signed a written consent meeting the requirements of § 2.31 (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.

(b) *Duration of consent.* The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:

(1) The anticipated length of the treatment;

(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and

(3) Such other factors as the program, the patient, and the person(s) who will receive the disclosure consider pertinent.

(c) *Revocation of consent.* The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no later than the final disposition of the conditional release or other action in connection with which consent was given.

(d) *Restrictions on redisclosure and use.* A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given.

Subpart D—Disclosures Without Patient Consent

§ 2.51 Medical emergencies.

(a) *General Rule.* Under the procedures required by paragraph (c) of this section, patient identifying information may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

(b) *Special Rule.* Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

(c) *Procedures.* Immediately following disclosure, the program shall document the disclosure in the patient's records, setting forth in writing:

(1) The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;

(2) The name of the individual making the disclosure;

(3) The date and time of the disclosure; and

(4) The nature of the emergency (or error, if the report was to FDA).

(Approved by the Office of Management and Budget under Control No. 0930–0099.)

§ 2.52 Research activities.

(a) Patient identifying information may be disclosed for the purpose of conducting scientific research if the program director makes a determination that the recipient of the patient identifying information:

(1) Is qualified to conduct the research; and

(2) Has a research protocol under which the patient identifying information:

(i) Will be maintained in accordance with the security requirements of § 2.16 of these regulations (or more stringent requirements); and

(ii) Will not be redisclosed except as permitted under paragraph (b) of this section.

(b) A person conducting research may disclose patient identifying information obtained under paragraph (a) of this section only back to the program from which that information was obtained and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

§ 2.53 Audit and evaluation activities.

(a) *Records not copied or removed.* If patient records are not copied or removed, patient identifying information may be disclosed in the course of a review of records on program premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and who:

(1) Performs the audit or evaluation activity on behalf of:

(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or

(ii) Any private person which provides financial assistance to the program, which is a third party payer covering patients in the program, or which is a peer review organization performing a utilization or quality control review; or

(2) Is determined by the program director to be qualified to conduct the audit or evaluation activities.

(b) *Copying or removal of records.* Records containing patient identifying information may be copied or removed from program premises by any person who:

(1) Agrees in writing to:

(i) Maintain the patient identifying information in accordance with the security requirements provided in § 2.16 of these regulations (or more stringent requirements);

(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section; and

(2) Performs the audit or evaluation activity on behalf of:

(i) Any Federal, State, or local governmental agency which provides financial assistance to the program or is authorized by law to regulate its activities; or

(ii) Any private person which provides financial assistance to the program, which is a third part payer covering patients in the program, or which is a peer review organization performing a utilization or quality control review.

(c) *Medicare or Medicaid audit or evaluation.* (1) For purposes of Medicare or Medicaid audit or evaluation under this section, audit or evaluation includes a civil or administrative investigation of the program by any Federal, State, or local agency responsible for oversight of the Medicare or Medicaid program and includes administrative enforcement, against the program by the agency, of any remedy authorized by law to be imposed as a result of the findings of the investigation.

(2) Consistent with the definition of program in § 2.11, program includes an employee of, or provider of medical services under, the program when the employee or provider is the subject of a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section.

(3) If a disclosure to a person is authorized under this section for a Medicare or Medicaid audit or evaluation, including a civil investigation or administrative remedy, as those terms are used in paragraph (c)(1) of this section, then a peer review organization which obtains the information under paragraph (a) or (b) may disclose the information to that person but only for purposes of Medicare or Medicaid audit or evaluation.

(4) The provisions of this paragraph do not authorize the agency, the program, or any other person to disclose or use patient identifying information obtained during the audit or evaluation for any purposes other than those necessary to complete the Medicare or Medicaid audit or evaluation activity as specified in this paragraph.

(d) *Limitations on disclosure and use.* Except as provided in paragraph (c) of this section, patient identifying information disclosed under this section may be disclosed only back to the program from which it was obtained and used only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by a court order entered under § 2.66 of these regulations.

Subpart E—Court Orders Authorizing Disclosure And Use

§ 2.61 Legal effect of order.

(a) *Effect.* An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290ee–3, 42 U.S.C. 290dd–3 and these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under these regulations.

(b) *Examples.* (1) A person holding records subject to these regulations receives a subpoena for those records: a response to the subpoena is not permitted under the regulations unless an authorizing court order is entered. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under these regulations.

(2) An authorizing court order is entered under these regulations, but the person authorized does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person authorized to disclose must disclose, unless there is a valid legal defense to the process other than the confidentiality restricitons of these regulations.

§ 2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under these regulations may not authorize qualified personnel, who have received patient identifying information without consent for the purpose of conducting research, audit or evaluation, to disclose that information

or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under § 2.66 may authorize disclosure and use of records to investigate or prosecute qualified personnel holding the records.

§ 2.63 Confidential communications.

(a) A court order under these regulations may authorize disclosure of confidential communications made by a patient to a program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

§ 2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application mst use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of these regulations) to disclosure or the court has ordered the record of the proceeding sealed from public scrunity.

(b) *Notice.* The patient and the person holding the records from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons: and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of these regulations. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order.

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

§ 2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records to criminally investigate or prosecute a patient may be applied for by the person holding the records or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 2.66 is sought with an order under this section, the person holding the records must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel independent of counsel for an applicant who is a person performing a law enforcement function.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of the program to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within Federal, State, or local government has in fact been

represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment on only that public interest and need found by the court.

§ 2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a program or the person holding the records.

(a) *Application.* (1) An order authorizing the disclosure or use of patient records to criminally or administratively investigate or prosecute a program or the person holding the records (or employees or agents of that program or person) may be applied for by any administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over the program's or person's activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against a program or the person holding the records (or agents or employees of the program or person) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 2.31 of these regulations) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to the program, to the person holding the records, or to any patient whose records are to be disclosed, upon implementation of an order so granted any of the above persons must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, paragraphs (d) and (e) of § 2.64 of these regulations.

(d) *Limitations on disclosure and use of patient identifying information:* (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 2.65 of these regulations.

§ 2.67 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of a program.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the program are engaged in criminal misconduct.

(b) *Notice.* The program director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The program director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The program director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of the program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 2.65 of these regulations.

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Part III

Office of Management and Budget

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Proposed Revision of Circular A-102

OFFICE OF MANAGEMENT AND BUDGET

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Proposed revision of circular A–102.

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed revision to Office of Management and Budget Circular A–102, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

An interagency task force under the President's Council on Management Improvement (PCMI) was established to review existing guidance for managing Federal aid programs. Five teams were established to examine various aspects of the assistance process: pre-award, post-award, after-the-grant, property and procurement, and entitlement programs. On June 18, 1984, OMB published a notice in the **Federal Register** (49 FR 24958) announcing the review and a list of over 50 issues that would be addressed. The teams analyzed comments received in response to the notice, studied existing agency regulations, and drafted provisions for a single, governmentwide common regulation that will replace most of Circular A–102.

The proposed revised circular is shown below in its entirety. The circular itself provides guidance to Federal agencies in the management of grants and cooperative agreements and calls upon agencies to issue "common" regulations. The affected agencies are proposing the common regulations elsewhere in this issue. In addition, a notice of the availability of proposed, revised grant application and financial reporting forms was published on May 29, 1987 (51 *FR* 20178) which, when finalized, will be the forms required for use.

DATES: Comments must be received on or before August 10, 1987.

ADDRESSES: Comments should be submitted to the Financial Management Division, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jonathan Breul, 202–395–3050.

OMB Circular A–102

To the Heads of Executive Departments and Agencies

Subject: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

1. *Purpose.* This circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with State, local, and federally recognized Indian tribal governments.

2. *Authority.* This circular is issued under authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541. Also included in the circular are standards to ensure consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968, the Office of Federal Procurement Policy Act Amendments of 1983, and the Federal Grant and Cooperative Agreement Act of 1977.

3. *Background.* On March 12, 1987, the President directed all affected agencies to issue a common grants management regulation to adopt governmentwide terms and conditions for grants to State and local governments. This revision to Circular A–102 provides guidance to Federal agencies on matters not covered in common regulatory terms and conditions.

4. *Coverage.* Consistent with their legal obligations, all Federal agencies administering programs that involve grants and cooperative agreements with State, local and Indian tribal governments shall follow the policies in this circular and issue common grants administration regulations (common regulations). If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in the circular, the provisions of the enabling legislation shall govern.

5. *Exceptions.* The Office of Management and Budget may grant exceptions from the requirements of this circular when permissible under existing law. However, in the interest of uniformity and consistency, exceptions will be permitted only in exceptional circumstances.

6. *Pre-Award Policies.*

a. *Use of grants or cooperative agreements.* The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301) governs the use of grants, contracts and cooperative agreements. A grant or cooperative agreement will be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is anticipated between the executive agency and the recipient during performance of the contemplated activity."

b. *Advance Public Notice and Priority Setting.*

(1) Federal agencies shall provide the public with an advance notice in the **Federal Register**, or by other appropriate means, of intended funding priorities for discretionary assistance programs unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.

(2) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grant awards in excess of $25,000 shall be reviewed for consistency with agency priorities by a policy level official.

c. *Standard Forms for Applying for Federal Assistance.*

(1) Agencies shall use the forms prescribed in § ____.10 of the common regulation for all programs except for those that require no application.

(a) *Preapplication for Federal Assistance.* The Preapplication for Federal Assistance is used to: (1) Establish communication between the agency and the applicant, (2) determine the applicant's eligibility, (3) determine how well the project can compete with similar projects from others, and (4) eliminate any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications. Preapplication forms shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds $100,000 unless the Federal agency determines that a Preapplication is not needed. It may be used for other programs, if desired. In addition, agencies may establish procedures allowing state and local government applicants to submit a preapplication if they so desire, when there are no mandatory requirements for preapplication.

(b) *Application for Federal Assistance (Nonconstruction Programs).* The Application for Federal Assistance (Nonconstruction Programs) form shall be used for all programs, except those

where the major purpose is construction, land acquisition, or land development.

(c) *Application for Federal Assistance (Construction Programs).* The Application for Federal Assistance (Construction Programs) form will be used for all grants where the major purpose of the program involves construction, land acquisition, or land development.

(2) Requests by grantees for changes, continuations, and supplements to approved grants will be submitted on the same form as the original application. For these purposes, only the amended pages of the forms will be required.

(3) Agencies may specify how and whether budgets should be separately shown by functions or activities within the program or project.

(4) When additional information is needed to comply with legislative requirements or to meet specific program needs, Federal agencies shall obtain OMB clearance in accordance with the Paperwork Reduction Act clearance requirements of 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public."

(5) Addition assurances shall not be added to those contained in the forms unless specifically required by statutes or Federal agency regulations.

(6) Agencies have the option of shading out any line item on any form that is unnecessary for decisionmaking purposes or for meeting the requirements of other circulars or laws except for the Standard Form 424 facesheet. This form shall not be modified. If an item is not applicable, write or overprint "NA" in the space provided for each item.

(7) Federal grantor agencies are authorized to reproduce these forms. The Standard Form 424 can be obtained from the General Services Administration.

d. *Debarment and Suspension.* Federal agencies shall not award assistance to applicants that are debarred or suspended, or are otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. Agencies shall establish procedures for the effective use of the Consolidated List of Debarred, Suspended, Voluntarily Excluded and Ineligible Assistance Participants to assure that they do not award assistance to listed parties in violation of the Executive Order. Agencies shall also establish procedures to provide for the effective use and/or dissemination of the list to assure that their recipients and subrecipients (including contractors) at any tier do not make awards in violation of the Executive Order.

e. *Awards and Adjustments to Awards.* (1) Ordinarily awards should be made at least ten days prior to the beginning of the grant period.

(2) Agencies shall notify recipients immediately of any anticipated adjustments in the amount of an award. This notice shall be provided as early as possible in the funding period. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of an award, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

f. *Carryover Balances.* Agencies shall be prepared to identify to OMB the amounts of carryover balances (e.g., the amounts of estimated, grantee unobligated balances available for carryover into subsequent grant periods). This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

g. *Special Conditions or Restrictions.* Agencies may impose special conditions or restrictions on awards to "high risk" applicants/recipients in accordance with § ____.12 of the common regulation.

h. *Waiver of "Single" State Agency Requirements.*

(1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 204 of the Intergovernmental Cooperation Act of 1968 shall be given expeditious handling and, whenever possible, an affirmative response.

(2) When it is necessary to refuse a request for waiver of "single" State agency requirements under section 204, the Federal grantor agency handling such a request shall advise the Office of Management and Budget prior to informing the State that the request cannot be granted. The agency will indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing "single" State agency requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

(i) *Patent Rights.* Agencies shall use the standard patent rights clause specified in "Rights to Inventions made by Nonprofit Organizations and Small Business Firms" (37 CFR Part 401) when providing support for research and development.

7. *Post-award Policies*

a. *Cash Management.* Methods and procedures for transferring funds shall minimize the time elapsing between the transfer and the recipient's need for the funds.

(1) Such transfers shall be made consistent with program purposes, applicable laws and Treasury regulations 31 CFR Part 205.

(2) Where letters-of-credit are used to provide funds, they shall be in the same amount as the award.

b. *Recipient Financial Management Systems.*

(1) In assessing the adequacy of an applicant's financial management system, the awarding agency shall rely on readily available sources of information such as audit reports to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

(2) Federal agencies shall prescribe whether reporting shall be on a cash or accrual basis. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system, but shall develop such accrual information through an analysis of the documentation on hand.

c. *Program Income.*

(1) Agencies should encourage recipients to generate program income to help defray program costs. However, Federal agencies shall not permit recipients to use grant-acquired equipment or services to compete unfairly with the private sector.

(2) Federal agencies shall instruct recipients to deduct program income from total program costs as specified in the common regulation at § ____.25(g)(1) unless agency regulations or the terms of the grant state otherwise. Authorization for recipients to follow the other alternatives in § ____.25(g)(2) and (3) shall be granted sparingly.

d. *Site Visits and Technical Assistance.* Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only (1) in response to requests from recipients, or (2) when recipients are designated "high risk" under § ____.12 of the common rule.

8. *After-the-Grant Policies.*

a. *Closeout.*

Federal agencies shall notify recipients in writing before the end of the grant period of final reports that will be due, the dates by which they must be received, and where they must be

submitted. Copies of any required forms and instructions for their completion shall be included with this notification. The Federal actions that must precede closeout are:

—Receipt of all required reports
—Disposition or recovery of federally owned assets
—Adjustment of the award amount and the amount of Federal cash paid the recipient.

b. *Annual Reconciliation of Continuing Assistance Awards.*

Federal agencies shall reconcile continuing awards at least annually and evaluate program performance and financial reports. Items to be reviewed include:

(1) A comparison of the recipient's work plan to its progress reports and project outputs,

(2) The Financial Status Report (SF 269),

(3) Request(s) for payment,

(4) Compliance with any matching, level of effort or maintenance of effort requirement, and

(5) A review of federally owned property for which the recipient is accountable.

9. *Entitlements (Reserved)*

10. *Policy Review (Sunset).* The circular will have a policy review (*three years from date signed*).

11. *Effective Date.* The circular is effective (*60 days from date signed*).

12. *Inquiries.* Further information concerning this circular may be obtained from:

Financial Management Division, New Executive Office Building, Room 10215, Office of Management and Budget, Washington, DC 20503, Telephone: (202) 395–3993.

Gerald R. Riso,

Associate Director for Management.

[FR Doc. 87–12976 Filed 6–8–87; 8: 45 am]

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Tuesday
June 9, 1987

Part IV

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Notice of Proposed Rulemaking

Department of Agriculture
Department of Energy
Small Business Administration
Department of Commerce
Department of State
Department of Housing and Urban Development
Department of Justice
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
Veterans Administration
Environmental Protection Agency
Department of the Interior
Federal Emergency Management Agency
Department of Health and Human Services
National Foundation on the Arts and the Humanities
    National Endowment for the Arts
    National Endowment for the Humanities
    Institute of Museum Services
ACTION
Commission on the Bicentennial of the United States Constitution
Department of Transportation

DEPARTMENT OF AGRICULTURE

7 CFR PART 3016

DEPARTMENT OF ENERGY

10 CFR PART 600

SMALL BUSINESS ADMINISTRATION

13 CFR PART 143

DEPARTMENT OF COMMERCE

15 CFR PART 24

DEPARTMENT OF STATE

22 CFR PART 135

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PARTS 85, 111, 511, 570, 571, 575, 850, 905, 941, 968, AND 990

DEPARTMENT OF JUSTICE

28 CFR PART 66

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29 CFR PART 97

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR PART 1470

DEPARTMENT OF DEFENSE

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR PART 1157

National Endowment for the Humanities

45 CFR PART 1174

Institute of Museum Services

45 CFR PART 1183

ACTION

45 CFR PART 1234

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR PART 2015

DEPARTMENT OF TRANSPORTATION

49 CFR PART 18

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCIES: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of State; Department of Transportation; Action; Commission on the Bicentennial of the United States Constitution; Environmental Protection Agency; Federal Emergency Management Agency; Federal Mediation and Conciliation Service; Institute of Museum Services; National Archives and Records Administration; National Endowment for the Arts; National Endowment for the Humanities; National Science Foundation; Small Business Administration; Veterans Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes common regulations establishing consistency and uniformity among the Federal agencies shown above in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments.

DATES: To be assured of consideration, comments on these proposed rules must be in writing and must be received on or before August 10, 1987. Comments should refer to specific sections in the regulation.

ADDRESSEES: See individual agencies below.

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:

Background

The Office of Management and Budget (OMB) Circular A–102, "Uniform Requirements for Assistance to State and Local Governments," was originally promulgated in 1971. It is one of OMB's six grants management circulars. The others are: Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations;" Circular A–87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments;" Circular A–21, "Cost Principles for Institutions of Higher Education;" Circular A–122, "Cost Principles for Nonprofit Organizations; and Circular A–128, "Audits of State and Local Governments."

A–102 establishes standards for consistency and uniformity among Federal agencies in the administration of grants and other types of financial assistance to State, local, and federally recognized Indian tribal governments, and limits Federal agencies' imposition of "excessive" requirements on grantees. Also included in the circular are standards to ensure the consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968 (31 U.S.C. 6501).

The circular's standards, as currently written, are set forth in 16 "attachments" covering such topics as cash depositories, bonding and insurance, financial reporting, payment, matching, application forms, property, procurement, and audit. With two principal exceptions, the circular has remained essentially unchanged since 1971. One significant change was a revision to Attachment O, "Procurement Standards," in August 1979; a second was the development of Attachment P, "Audit Standards," in October 1979.

Based on numerous recommendations received from State and local governments to the President's Task Force on Regulatory Relief, the Office of Management and Budget wrote 15 State and local interest groups and 17 Federal agencies for their ideas on streamlining OMB Circular A–102. These comments suggested a number of things, including that:

(a) A–102 is "not broken"—the basic policies and standards established for accountability of grant funds have worked well.

(b) Some of A–102 is "out-of-date," e.g., dollar thresholds for defining equipment are too low, given 13 years of inflation.

(c) A–102 needs to be "more readable"—at present it is a series of 16 attachments addressed to both grantors and grantees. Many suggested reorganizing the policies to reflect the grants management process (pre-award, post-award, after-the-grant) and sort out the roles about who does what to whom, in any particular circumstance.

(d) There are "gaps" in A–102 in some additional important areas where governmentwide standardization makes sense, e.g.,

(1) Screening out suspended and debarred organizations;

(2) More guidance on prompt closeout.

(e) Some policies may need clarification, e.g., the program income rules, and whether and how the rules apply to subrecipients—known as the so-called "flowdown" policy.

(f) A–102 should be implemented in regulations as a condition of all grants. As an OMB circular, A–102 is not codified in the Code of Federal Regulations.

(g) Finally, the uniformity A–102 originally sought to achieve in 1971 has been undercut to some extent by the many and various agency implementing regulations, and noncodified manuals, handbooks, etc.

(1) Six agencies have adopted A–102 in departmental regulations (Agriculture, Education, Energy, HHS, Labor and EPA).

(2) Three others do so partly or fully in program regulations (HUD, Interior, and FEMA).

(3) Others use binding terms and conditions or noncodified manuals and handbooks for all or part of A–102.

(4) Only one agency issues any part of A–102 verbatim in regulations.

(5) Many restate parts of it.

(6) Others modify it.

(7) While others cross-reference parts of it.

(8) Most do some combination of all of these approaches.

Review Process

In November 1983, a 20–agency task force under the Assistant Secretaries for Management Group (now the President's Council on Management Improvement), chaired by OMB, was established to explore streamlining grant management and review Circular A–102.

The group was organized into five teams to review pre-award issues, post-award issues, after-the-grant issues, property and procurement issues, and entitlement issues.

On June 18, 1984, OMB published a Notice in the **Federal Register** (49 FR 24958–24959) seeking comments on a technical paper with over 50 issues and possible options for each. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress submitted several hundred comments on the working paper.

The five agency-chaired teams studied existing federal agency regulations implementing Circular A–102 to develop and draft a "common" governmentwide regulation. Adjustments and additions were made to reflect agency and public comments received to the June **Federal Register** Notice.

The proposed OMB circular, published elsewhere in this issue, and this proposed rule reflect the results of these efforts. The circular provides OMB guidance to Federal agencies on good grants management practices for the award and administration of Federal grants. The proposed "common" governmentwide, regulation states the fiscal and administrative conditions governing grants to State and local governments and subrecipients which are State and local governments.

Summary of Significant Changes

The most significant changes include:

a. A *reorganization* of the structure and ordering of the circular to be more readable and reflect the grants management process (pre-award, post-award, after-the-grant) and sort out grantor and grantee responsibilities.

b. Separate, agency regulations containing *common grant terms and conditions*, to guarantee prompt and complete implementation of uniform administrative requirements for grantees.

c. Greater *reliance on State law and procedures*. instead of Federal requirements for financial management systems, and to some extent, property and procurement requirements governing costs incurred at the State level. The effect of this change would be that States could retain for State use equipment, but not real property, purchased for Federal grant programs.

d. Technical amendments to *modernize out-dated provisions*. For example, the dollar threshold established 16 years ago to define equipment is raised from $300 to $5,000; similarly, the dollar threshold for using small purchase procedures is increased from $10,000 to $25,000.

e. *Simplification* of requirements imposed on recipients whenever possible, consistent with accountability for Federal funds. For example, the rule requiring Federal approval for rebudgeting actions affecting more than 5% of costs is relaxed to 10%.

f. *Additional standardization* of requirements to fill in some "gaps" not covered in the original Circular A–102. For example, policies are established calling for screening out suspended and debarred organizations, and further guidance is provided on prompt closeout.

g. *Clarification* of current policies which were confusing or misunderstood. For example, the definition and use of program income are strengthened to require agencies to indicate which one of three options on its use applies. The "flow-down" policy requiring grantees to follow A–102 with subrecipients (receiving subgrants or contracts) is clarified.

h. *Policy changes*. For example, many groups recommended restrictions against use of grant-acquired property to compete unfairly with the private sector, and a standard policy on use of unobligated carryover balances.

"Common" Rulemaking

Because the agencies are directed by OMB Circular A–102 to promulgate implementing regulations and because the proposed standards and procedures are the same for all Federal agencies, this notice is being published as a proposed "common" rulemaking. On March 12, 1987, the President directed all affected agencies to simultaneously propose common regulations that adopt government-wide terms and conditions. However, several agency's rules reflect differences required in statute (e.g., the five-year record retention requirement for Department of Education programs under the General Education Provisions Act (GEPA)). Such differences are indicated in the text. The proposed rules adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations as indicated in the information provided for individual agencies below. All grants administration provisions in program regulations which are inconsistent with the proposed rules will be rescinded, except to the extent they are required by legislation or approved after these rules are final as a deviation by OMB. Likewise, all grants administration provisions of noncodified program manuals, handbooks and other materials which are inconsistent with the proposed rules will be superseded, except to the extent they are required by legislation or approved after these rules are final as a deviation by OMB. All such remaining material will be reviewed to see if they are needed.

The "common" uniform regulations which will result from this proposal will help achieve several important objectives:

(1) Simplification and standardization of the Federal grant process.

(2) Elimination of fraud and waste in the grants process through more uniform, business-like management.

(3) Elimination of redundant and inconsistent administrative requirements within and among the agencies in regulations and in manuals, handbooks, and other noncodified issuances.

(4) Reliance on standard grant forms and language to reduce the Federal Government's costs of awarding assistance and the recipients' costs of performing assisted activities.

Public Comment

In particular, comments are encouraged on:

• *Federalism.* Consistent with the President's Federalism principles, proposed regulations provide that, subject to certain minimal standards, a State shall expend and account for grant funds in accordance with the financial management, property and procurement laws and procedures applicable to its own funds. This rule applies only to funds expended by the State itself, i.e., not assistance funds subgranted or passed through to others.

• *"Flow-down."* To maintain uniformity for subgrantees, the proposed regulations continue to apply not only to direct governmental recipients of Federal grants, but also to subrecipients. Governmental subgrantees are subject to these rules and the cost principles in Circular A–87. Non-governmental grantees (and subgrantees) will continue to be subject to Circular A–110 and the cost principles corresponding to their type of organization: Circular A–21 for colleges and universities and Circular A–122 for other nonprofit organizations.

• *Open-Ended Entitlements.* The proposal does not apply, to open-ended grants. These are grants for public assistance programs, such as Medicaid and Aid to Families with Dependent Children, for which the Federal Government pays a statutorily-required share of costs without dollar limit. Because of this open-ended feature and because of special statutory requirements, these grants are administered differently from other grants in some important respects. Historically, entitlement programs have been subject to A–102, but many of the attachments (such as application forms and budget revisions) were simply not appropriate. As a consequence, deviations were requested from the financial reporting forms. For these reasons, the proposed rules do not cover open-ended entitlement programs. Nevertheless suggestions are particularly invited on several important issues, including (1) whether and how the standard financial reporting form (SF–269) should apply, (2) what reporting should be standardized in "core" forms, (3) what provisions in the proposed uniform regulations should apply to entitlements, or conversely, and (4) what requirements should not apply. Commenters should respond to these issues seriatum (in a series) to facilitate subsequent analysis of the replies.

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We intend the proposed regulations to result in savings to State and local governments in the costs of administering grants. However, we do not believe that the regulations will have an annual economic effect of $100 million or more or the other effects listed in the Order. For this reason, we have determined that these regulations are not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U. S.C. 605 (b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

Sections ____.10(c); ____.20(b)(2); ____.24(b)(6); ____.30 (f)(1) and (f)(3); ____.32 (d)(1) and (f)(2); ____.36 (b)(9), (c)(3), and (i); ____.40 (b)(2), (c) and (d); ____.41 (b), (c), (d) and (e); ____.42(b); and, ____.50(b) of this rule contain collection-of-information requirements. As required by the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these reporting and recordkeeping requirements. No recipient may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. Organizations and individuals desiring to submit comments on these collection-of-information requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN Ed Springer.

DEPARTMENT OF AGRICULTURE (USDA)

Office of the Secretary

7 CFR Parts 3015 and 3016

ADDRESS: Comments should be sent to Gerald Miske, Branch Chief, USDA, Office of Finance and Management, Financial Management Division, Room 1369–South Building, 14th and Independence Avenue SW., Washington, DC 20250. Comments received may also be inspected at Room 1369–S between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Gerald Miske (Branch Chief), (202)382–1553.

ADDITIONAL SUPPLEMENTARY INFORMATION: USDA has Uniform Federal Assistance Regulations found at 7 CFR Part 3015 which establish Department-wide policies and standards for the administration of grants and cooperative agreements. The rules primarily implement OMB Circular A–102, "Uniform Requirements for Grants to State and Local Governments," Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," Circular A–128, "Audits for State and Local Governments," and Executive Order 12372, "Intergovernmental Review of Federal Programs." Part 3015 also sets forth the Department policy on competition in awarding discretionary grants and cooperative agreements and identifies the cost principles specified in Circular A–21 for universities, A–87 for State and local governments, A–122 for nonprofit organizations, and 41 CFR 1–15.2 for for-profit organizations.

Presidential Memorandum, "Uniform Requirements for Grants to State and Local Governments," dated March 12, 1987, directed that Executive departments and agencies simultaneously propose common

regulations that adopt the Government-wide terms and conditions of the proposed revisions to Circular A-102 verbatim.

The Circular A-102 common rule, Subparts A-D, is not intended to apply to open-ended entitlement programs. It is proposed that coverage for those programs will be provided in a future Subpart E. Pending the issuance of Subpart E, open-ended entitlements will remain subject to the requirements of Part 3015.

USDA proposes to adopt the A-102 common regulation by adding a new Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Part 3016 is intended to apply to assistance relationships documented by grants and cooperative agreements, and subawards to State and local governments, except for the following open-ended entitlement grants administered by the Food and Nutrition Service:

(a) State Administrative Matching Grants for Food Stamp Program.

(b) National School Lunch Program (includes school lunch, special meal assistance, and commodity assistance).

(c) School Breakfast Program.

(d) Summer Food Service Program.

(e) Child Care Food Program.

(f) Special Milk Program for Children.

It is proposed that Part 3015 will no longer govern assistance relationships with State and local governments, except as provided below. However, the above listed open-ended entitlement grants, as well as grants and cooperative agreements to institutions of higher education, hospitals, other nonprofit organizations, and for-profit organizations will continue to be subject to Part 3015.

It is proposed that the following subparts of Part 3015 remain in effect for State and local governments that receive assistance from USDA:

(a) Subpart I on audits of State, local, and Indian Tribal governments.

(b) Subpart Q, § 3015.158 on competition.

(c) Subpart T on cost principles.

(d) Subpart V on the intergovernmental review of Federal programs.

Comments

USDA proposes to amend 7 CFR 3015.1 and 3015.2 in order to redefine the recipients to which this rule applies. Since the policy in Part 3015 is not being revised for those recipients which it still covers, comments on this proposed rule are limited to the clarity of the changes in §§ 3015.1 and 3015.2

List of Subjects

7 CFR Part 3015

Grant Programs (Agriculture), Intergovernmental relations.

7 CFR Part 3016

Grant Programs (Agriculture).

Issued at Washington, DC, May 21, 1987.

Accordingly, it is proposed to amend Title 7 of the Code of Federal Regulations as set forth below.

John J. Franke, Jr.,

Assistant Secretary for Administration.

Approved: May 21, 1987.

Richard E. Lyng,

Secretary of Agriculture.

1. It is proposed that Title 7 of the Code of Federal Regulations be amended by adding Part 3016 as set forth at the end of this document.

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

3016.1 Purpose and scope of this part.
3016.2 Scope of subpart.
3016.3 Definitions.
3016.4 Applicability.
3016.5 Effect on other issuances.
3016.6 Exceptions.

Subpart B—Pre-Award Requirements

3016.10 Forms for applying for grants.
3016.11 State plans.
3016.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

3016.20 Standards for financial management systems.
3016.21 Payment requirements.
3016.22 Allowable costs.
3016.23 Period of availability of funds.
3016.24 Matching or cost sharing.
3016.25 Program income.
3016.26 Non-Federal audit.

Changes, Property, and Subawards

3016.30 Changes under discretionary (project) awards.
3016.31 Real property.
3016.32 Equipment.
3016.33 Supplies.
3016.34 Copyrights.
3016.35 Subawards to debarred and suspended parties.
3016.36 Procurement.

Reports, Records Retention, and Enforcement

3016.40 Monitoring and reporting program performance.
3016.41 Financial reporting.
3016.42 Retention and access requirements for records.
3016.43 Enforcement.
3016.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

3016.50 Closeout.
3016.51 Later disallowances and adjustments.
3016.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

PART 3015—[AMENDED]

2. USDA proposes to amend Subpart A of 7 CFR Part 3015 as follows:

a. The authority citation for Part 3015 continues to read as follows:

Authority: 5 U.S.C. 301.

b. Section 3015.1(a) is revised to read as follows:

Subpart A—General

3015.1 Purpose and scope of this part.

(a)(1) This part establishes USDA-wide uniform requirements for the administration of grants and cooperative agreements and sets forth the principles for determining costs applicable to activities assisted by such USDA awards. This part contains rules that apply to USDA grants and cooperative agreements to institutions of higher education, hospitals, and other nonprofit organizations, as well as those that apply to open ended entitlement grants, and specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements to State and local governments, universities, non-profit and for-profit organizations as set forth in OMB Circulars A-87, A-21, and A-122, 41 CFR 1-15.2, respectively.

(2) Additionally, this part establishes uniform audit requirements for State, local, and Indian Tribal governments pursuant to the Single Audit Act of 1984 and OMB Circular A-128, intergovernmental review provisions required by Executive Order 12372 for any programs listed in the **Federal Register** as covered, and policy on competition in awarding discretionary grants and cooperative agreements.

(3) Rules for nonentitlement grants and cooperative agreements to State and local governments are found in Part 3016.

* * * * *

c. Section 3015.2(d) introductory text is republished and paragraph (d)(5) is added to read as follows:

§ 3015.2 Applicability.

* * * * *

(d) Recipients to which this part does not automatically apply. This part does not automatically apply to the kinds of

recipients listed below unless other conditions set forth in the grant, cooperative agreement, subgrant, or specific subpart in this part make all or specified portions apply:

* * * * *

(5) State and local governments, except open-ended entitlements to State and local governments.

* * * * *

DEPARTMENT OF ENERGY

10 CFR Part 600

ADDRESS: Comments should be addressed to: U.S. Department of Energy, Cherlyn Seckinger, Business and Financial Policy Division (MA–422), 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Cherlyn Seckinger, Business and Financial Policy Division (MA–422), Procurement and Assistance, Management Directorate, Washington, DC 20585, (202)586–9737.

ADDITIONAL SUPPLEMENTARY INFORMATION: The DOE Financial Assistance Rules, 10 CFR Part 600, establish uniform policies and procedures for the award and administration of DOE grants and cooperative agreements. These policies and procedures cover internal requirements applicable to the Department such as solicitation, selection, award, and closeout, as well as external requirements applicable to financial assistance recipients; e.g., reporting, management standards, and record retention.

The existing financial assistance rule is divided into four subparts. Subpart A—General, Subpart B—Grants, Subpart C—Cooperative Agreements, and Subpart D—Audits of State and Local Governments. As indicated by the titles of the individual subparts, the rule generally organizes requirements according to the type of financial assistance instrument selected; i.e., grant or cooperative agreement. Except for Subpart D which establishes audit requirements only for State and local governments, each subpart establishes requirements applicable to all types of recipients including nonprofit organizations, hospitals, State and local governments, universities, and for-profit organizations.

Because Part 600 (1) covers both internal and external requirements, (2) applies to all recipient types, and (3) is organized on the basis of general requirements, grant-specific requirements, and cooperative agreement-specific requirements, the proposed common rule, which would be established as a separate subpart, and cover requirements for grants and cooperative agreements with governmental recipients only, is not easily integrated into the structure of the existing rule.

While we propose to create a separate Subpart E of 10 CFR Part 600 for the purpose of incorporating the common rule verbatim as directed by Presidential Memorandum, dated March 12, 1987, except as noted above, DOE will continue to have requirements of general applicability to all recipients, including State and local governments, in the other subparts of the rule. These general requirements would cover areas not addressed in Subpart E such as § 600.13 Application deadlines, and § 600.20 Legal authority and effect of an award. DOE will provide cross references in each subpart to assist the user of the rule in identifying applicable requirements. The conforming amendments of Subparts A, B, and C, to Subpart E, will be issued at the time of final rulemaking. Subpart D will not be affected by this proposed revision.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Applications, Audit, Cooperative agreements/energy, Copyrights, Educational institutions, Eligibility, Energy financial assistance, For-profit organizations, Grants, Hospitals, Indian tribes, Individuals, Inventions and patents, Local governments, Management standards, Nonprofit organizations, Patents, Reporting and recordkeeping requirements, Solicitations, Small businesses, States, Technical data, Uniform administrative requirements.

It is proposed that Title 10, Part 600 of the Code of Federal Regulations be amended by adding Subpart E as set forth at the end of this document.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 600—FINANCIAL ASSISTANCE RULES

* * * * *

Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

Sec.

600.400 (____.1) Purpose and scope of this subpart.
600.401 (____.2) Scope of §§ 600.400 through 600.405.
600.402 (____.3) Definitions.
600.403 (____.4) Applicability.
600.404 (____.5) Effect on other issuances.
600.405 (____.6) Exceptions.

Pre-Award Requirements

600.410 (____.10) Forms for applying for grants.
600.411 (____.11) State plans.
600.412 (____.12) Special grant or subgrant conditions for "high risk" grantees.

Post-Award Requirements.

Financial Administration

600.420 (____.20) Standards for financial management systems.
600.421 (____.21) Payment requirements.
600.422 (____.22) Allowable costs.
600.423 (____.23) Period of availability of funds.
600.424 (____.24) Matching or cost sharing.
600.425 (____.25) Program income.
600.426 (____.26) Non-Federal audit.

Changes, Property, and Subawards

600.430 (____.30) Changes under discretionary awards.
600.431 (____.31) Real property.
600.432 (____.32) Equipment.
600.433 (____.33) Supplies.
600.434 (____.34) Copyrights.
600.435 (____.35) Subawards to debarred and suspended parties.
600.436 (____.36) Procurement.

Reports, Records Retention, and Enforcement

600.440 (____.40) Monitoring and reporting program performance.
600.441 (____.41) Financial reporting.
600.442 (____.42) Retention and access requirements for records.
600.443 (____.43) Enforcement.
600.444 (____.44) Termination for convenience.

After-the-Grant Requirements

600.450 (____.50) Closeout.
600.451 (____.51) Later disallowances and adjustments.
600.452 (____.52) Collection of amounts due.

Entitlements [Reserved]

Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308)

SMALL BUSINESS ADMINISTRATION

13 CFR Part 143

ADDRESS: Written comments should be addressed to: Robert B. Webber, General Counsel, 1441 L Street NW., Room 700, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Patricia R. Forbes, (202) 653–6573.

ADDITIONAL SUPPLEMENTARY INFORMATION: At present, the Small Business Administration (SBA) uses cooperative agreements with State governments only in the Small Business Development Center program and, in that program, only with Illinois, Indiana and Ohio. In addition, SBA makes grants to State governments only in its 7(j) program. However, the public should be advised that the Office of Management and Budget intends to coordinate the promulgation of a common regulation during the summer of 1987 to establish consistency among the Federal agencies in the administration of grants and cooperative agreements with institutions of higher education, hospitals and other nonprofit organizations. Therefore, SBA encourages all Small Business Development Center program participants and interested parties to comment on SBA's adaptation of the proposed regulation.

List of Subjects in 13 CFR Part 143

Accounting, Administrative practice and procedure, Grant programs, Business Grants Administration, Insurance, Reporting and recordkeeping requirements, Small businesses.

It is proposed that Title 13 of the Code of Federal Regulations be amended by adding Part 143 as set forth at the end of this document.

Dated: May 27, 1987.

James Abdnor,

Administrator.

PART 143—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

143.1 Purpose and scope of this part.
143.2 Scope of subpart.
143.3 Definitions.
143.4 Applicability.
143.5 Effect on other issuances.
143.6 Exceptions.

Subpart B—Pre-Award Requirements

143.10 Forms for applying for grants.
143.11 State plans.
143.12 Special grant or subgrant conditions for "high risk" recipients.

Subpart C—Post-Award Requirements

Financial Administration

143.20 Standards for financial management systems.
143.21 Payment requirements.
143.22 Allowable costs.
143.23 Period of availability of funds.
143.24 Matching.
143.25 Program income.
143.26 Non-Federal audit.

Changes, Property, and Subawards

143.30 Changes under discretionary awards.
143.31 Real property.
143.32 Equipment.
143.33 Supplies.
143.34 Copyrights.
143.35 Subawards to debarred and suspended parties.
143.36 Procurement.

Reports, Records Retention, and Enforcement

143.40 Monitoring and reporting program performance.
143.41 Financial reporting.
143.42 Retention and access requirements for records.
143.43 Enforcement.
143.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

143.50 Closeout.
143.51 Later disallowances and adjustments.
143.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 15 U.S.C. 634(b)(6).

DEPARTMENT OF COMMERCE

15 CFR Part 24

ADDRESS: Comments may be mailed to Robert M. McNamara, Room 6026, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Robert M. McNamara, 202–377–5817.

List of Subjects in 15 CFR Part 24

Accounting, Grant programs, Grant administration, Insurance, Reporting and recordkeeping requirements.

Title 15 of the Code of Federal Regulations is amended by adding Part 24 as set forth at the end of this document.

Patrick F. Smith,

Director, Office of Program Development.

PART 24—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

24.1 Purpose and scope of this part.
24.2 Scope of subpart.
24.3 Definitions.
24.4 Applicability.
24.5 Effect on other issuances.
24.6 Exceptions.

Subpart B—Pre-Award Requirements

24.10 Form for applying for grants.
24.11 State plans.
24.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post Award Requirements

Financial Administration

24.20 Standards for financial management systems.
24.21 Payment requirements.
24.22 Allowable costs.
24.23 Period of availability of funds.
24.24 Matching or cost sharing.
24.25 Program income.
24.26 Non-Federal audit.

Changes, Property, and Subawards

24.30 Changes under discretionary "project" awards.
24.31 Real property.
24.32 Equipment.
24.33 Supplies.
24.34 Copyrights.
24.35 Subawards to debarred and suspended parties.
24.36 Procurement.

Reports, Records Retention, and Enforcement

24.40 Monitoring and reporting program performance.
24.41 Financial reporting.
24.42 Retention and access requirements for records.
24.43 Enforcement.
24.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

24.50 Closeout.
24.51 Later disallowances and adjustments.
24.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

DEPARTMENT OF STATE

22 CFR Part 135

ADDRESS: Comments should be sent to: Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: James Tyckoski, Office of the Procurement Executive (703) 235–2352.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of State intends to incorporate the proposed rule as Part 135 of Title 22 of the Code of Federal Regulations. The Department has not previously promulgated regulatory coverage for grants and cooperative agreements with State and local governments.

At this time, the Department has not identified any requirements necessitating exemption from the common rule; any such exemptions would be codified in this Part 135. The Department has one program that uses cooperative agreements, but these agreements are outside the meaning of "grants," which includes "cooperative agreements," as defined in the common rule.

The Department's Bureau for Refugee Programs may effect grants or cooperative agreements with state or local governments for the initial reception and placement of refugees under the authority of section 412(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1522(b)). Reception and placement cooperative agreements under this program are not subject to the proposed regulations because they are lump sum awards. The funds are not awarded to reimburse specific costs for which the recipient is required to account. Rather, subject to certain restrictions, the recipient has wide latitude in spending its money, provided that it provides the required services or ensures that those services are provided.

List of Subjects in 22 CFR Part 135

Accounting, Administrative practice and procedure, Grant programs—law enforcement, Grant programs—refugees, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 135 as set forth at the end of this document.

Joseph W. Globe,

Acting Procurement Executive.

May 26, 1987.

PART 135—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
135.1 Purpose and scope of this part.
135.2 Scope of subpart.
135.3 Definitions.
135.4 Applicability.
135.5 Effect on other issuances.
135.6 Exceptions.

Subpart B—Pre-Award Requirements

135.10 Forms for applying for grants.
135.11 State plans.
135.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

135.20 Standards for financial management systems.
135.21 Payment requirements.
135.22 Allowable costs.
135.23 Period of availability of funds.
135.24 Matching or cost sharing.
135.25 Program income.
135.26 Non-Federal audit.

Changes, Property, and Subawards

135.30 Changes under discretionary (project) awards.
135.31 Real property.
135.32 Equipment.
135.33 Supplies.
135.34 Copyrights.
135.35 Subawards to debarred and suspended parties.
135.36 Procurement.

Reports, Records Retention, and Enforcement

135.40 Monitoring and reporting program performance.
135.41 Financial reporting.
135.42 Retention and access requirements for records.
135.43 Enforcement.
135.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

135.50 Closeout.
135.51 Later disallowances and adjustments.
135.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 22 U.S.C. 2658.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 85, 111, 511, 570, 571, 575, 850, 905, 941, 968, and 990

[Docket No. R-87-1338; FR-2178]

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Room 5260, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-5294. (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION:

HUD Program Regulations Affected by OMB Circular A-102

The Department has determined that the following HUD programs with codified regulations will be affected by the adoption of rules implementing OMB Circular A-102:

1. Fair Housing Assistance Program (24 CFR Part 111);
2. Rental Rehabilitation Grant Program (24 CFR Part 511);
3. Programs Authorized under Title I of the Housing and Community Development Act of 1974, as Amended, and Codified at 24 CFR Part 570 (Entitlement Grants, the Secretary's Fund, the HUD-Administered Small Cities Program, Urban Development Action Grants, and Loan Guarantees) but not including the State's Program;
4. Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages (24 CFR Part 571);
5. Emergency Shelter Grant Program (24 CFR Part 575);
6. Housing Development Grant Program (24 CFR Part 850);
7. Indian Housing (24 CFR Part 905);
8. Public Housing Development Program (24 CFR Part 941);
9. Comprehensive Improvement Assistance Program (24 CFR Part 968); and
10. Annual Contributions for Operating Subsidies for Public Housing Projects (24 CFR Part 990).

These HUD program regulations would be revised under this proposed rule to cross reference to the requirements for State, local, and federally recognized Indian tribal governments under OMB Circular A-102, as set out in the new Part 85.

The Common Rule is intended to be a freestanding program regulation applicable by its terms to all State or local governmental entities when they are recipients or subrecipients of Federal grants. HUD intends, at or about the time the final rule is published, to revise its several regulations governing grant programs to cross reference the new 24 CFR Part 85. These revisions will serve two purposes: First, they will afford recipients a ready reference to the existence and applicability of A-102 requirements set out in Part 85, and the relevance of those requirements to the particular grant program in which the cross reference will appear. Second, where the requirements of A-102 (as set out in Part 85) are wholly or partially inapplicable, the cross reference in the program regulation will be the appropriate place to specify the effect of the new rulemaking on the existing grant program.

For example, HUD believes that most provisions of Subpart B of the Common Rule—Pre-award Requirements—would not apply to the Community Development Block Grant Entitlement program or to the Rental Rehabilitation program (24 CFR Part 570, Subpart D and Part 511, respectively) because § ____.10 does not apply to formula grant programs, and § ____.11 would not apply when the program statute does not require State plans. HUD also believes that the provisions of §§ ____.25 and ____.31 (of Subpart C) regarding the disposition of proceeds

from the sale of real property are inapplicable to the Community Development Block Grant Entitlement program. That program legislation authorizes seventeen listed program activities eligible for grant assistance including both the acquisition and the disposition "through sale, lease, donation or otherwise" of real property for community development. Consequently, the sale of property is itself an authorized use of property acquired with grant funds, rather than a disposition of property no longer needed for the grant purpose. Such properties are commonly sold by the grantee for redevelopment and the sale proceeds are appropriately treated as program income subject to the statutory provisions of the program that income must be used in accordance with the same requirements applicable to the grant funds. Accordingly, HUD proposes to provide, in Parts 570 and 511, appropriate language indicating the inapplicability of § ____.10, § ____.11, ____.25(f) and ____.31(c)(2) of the Common Rule.

HUD invites comment on the appropriateness of substituting A–102 requirements in the new Part 85 for existing grant management policy appearing in other specific departmental regulations. While the object of the common rulemaking—providing for uniform grant management practices throughout the Federal government—is clearly an important and worthwhile undertaking, the characteristics of particular statutory programs sometimes dictate that some variation from uniform requirements must be tolerated. HUD's final rule, therefore, may contain other program-specific revisions where, based on a program's statutory design, the manner in which the Department's new Part 85 is to be applied may have to be adjusted to particular circumstances. In part, these revisions may be responsive to public comments that identify specific anticipated problems with application of Part 85 requirements.

In this connection, we point to §____.12 of the common rule, which sets forth special grant or subgrant conditions for "high-risk" recipients. As a point of clarification, the Department stresses that this section should not be interpreted as allowing the setting of special conditions *only* for high-risk recipients. Other recipients who are not high-risk may have special conditions or restrictions imposed on them by HUD in appropriate cases.

HUD does not propose to make its Urban Homesteading Program (24 CFR Part 590) subject to Part 85. The purpose of the Urban Homesteading Program is to use existing housing stock to provide homeownership. HUD transfers federally owned properties without payment to local urban homesteading agencies and the local agencies administer a program to provide the properties to "homesteaders" at nominal cost. The properties passed through local agencies to homesteaders are not provided as "grants" to local government. The local government agency serves merely as the facilitator of a program aimed at benefitting qualified candidates for homeownership.

We propose that the several section 8 housing assistance payments programs remain outside the scope of A–102 and the common rule, and HUD proposes to continue separately regulating financial management associated with the section 8 program as part of 24 CFR Chapter VIII.

The section 8 Existing, Moderate Rehabilitation, and Housing Voucher programs are proposed to be exempted from Part 85. Under these programs, housing assistance payments are made to private owners for the purpose of subsidizing rental charges for lower income families occupying privately owned housing units. Public Housing Agencies administer these funds and assist lower income families in locating suitable housing under these programs, but the public agency essentially acts as a conduit for Federal financial assistance to the private owners.

Similarly, section 8 assistance under the New Construction and Substantial Rehabilitation Programs is made available to owners of dwelling units that have been constructed or rehabilitated for lease to lower income families. Among the owners are profit motivated and non-profit owners, including PHAs, the majority of which are the so-called "agency or instrumentality PHAs" established under State not-for-profit laws for the purpose of owning and leasing the projects to their "parent entity PHAs" for subleasing to eligible lower income families. Less than 10 percent of section 8 New Construction and Substantial Rehabilitation projects are owned outright by housing authorities. The great majority of the projects are privately owned. The duties and responsibilities of PHA Owners receiving housing assistance payments for eligible lower income families under the section 8 New Construction and Substantial Rehabilitation programs do not differ from those of a private owner participating in this same program. It would be counterproductive to subject the small numbers of projects owned by housing authorities, whose participation in the section 8 Program is so ancillary, to differing sets of financial management administrative requirements. In all cases, the assistance is being provided to lower income families; the owner is merely the conduit for the Federal financial assistance.

Accordingly, these programs are not, in HUD's view, appropriate for management under the uniform requirements of proposed Part 85, and HUD proposes to continue its existing grant management policies with reference to 24 CFR Parts 880 through 886 (HUD's program regulations governing the section 8 program) and Part 887 (HUD's proposed regulations to govern the Housing Voucher program).

The Common Rule makes cross-references to OMB Circular A–87 at §____.22(b) to identify applicable cost principles. However, some of the provisions of A–87 are inconsistent with the PHA–HUD relationship under the Annual Contributions Contract (ACC) because A–87 deals with grants which represent funding for a specific purpose. Also, operating subsidies are combined with locally generated income to fund PHA expenses. This situation, as well as the accounting system and the eligibility/ineligibility of costs under the Comprehensive Improvement Assistance Program (CIAP) will have to be evaluated for exemptions regarding A–87. Below are listed example provisions of A–87 which we perceive to be in conflict with our present policies, procedures, and practices, and we invite public comment on these and any other provisions of A–87 of concern.

1. Attachment B, Part B—Allowable Costs

—Provision (11) permits PHAs to depreciate the cost of buildings and equipment. However, the Department's accounting system does not provide for depreciation of capital assets.

—Provision (17) disallows maintenance and repair costs which add to the permanent value of the property or appreciably prolong its intended life unless specifically approved by the grant or agency under Attachment C (2)(c). This requirement for specific approval will be a problem under the Comprehensive Grant approach to the funding of public housing programs (i.e., development and modernization activities) that is currently under congressional consideration for Fiscal Year 1988 because this approach would not require specific approval.

—Provision (19) would not allow expenditures for membership in

organizations which devote substantial energies toward new legislation.

2. Attachment B, Part C—Costs Allowable With Approval of Grantor Agency

—Provision (3) states that "when assets acquired with Federal grant funds are (a) sold; (b) no longer available for use in a federally sponsored program; or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency equity in the asset will be refunded in the same proportion as Federal participation in its costs". We understand this to be inapplicable to the property of a PHA after the expiration of the ACC term. In the Public Housing Program, once the period of Federal interest, as evidenced by the Declaration of trust executed in favor of the government by the PHA, has ended, the Federal government has no further interest in the property (following the termination of the ACC) except to the extent the PHA may be indebted to the Government for excess financing or other claims against the Project or the PHA.

3. Attachment B, Part D—Unallowable Costs

—Because losses arising from uncollectible accounts (bad debts) are unallowable, we would not be able to write off uncollectible tenants' accounts receipts. This would create a false picture of the financial situation because the debts would only mount.

HUD has previously taken the position that annual contributions for public housing development and modernization are not subject to Circular A–102 requirements because the Federal assistance to public housing agencies was in the form of loans and loan guarantee commitments made by HUD. The Department's current method of funding public housing development and modernization by means of capital grants (as opposed to loans, as in the past) has the effect of subjecting public housing development and modernization funding to A–102 requirements. Public housing operating subsidies are administered as grants and therefore are also appropriate for A–102 grant management treatment. In this connection, there is one determination regarding public housing management that we wish to emphasize. Section ____.25 provides that program income does not include interest on grant funds and, thus, might be interpreted to mean that the Department can no longer offset interest income against subsidy amounts. However, under the public housing program management phase, interest income is treated the same as other program income in the determination of operating subsidy eligibility. Because the calculation of operating subsidy is part of the operating budget that is set from the beginning, the public housing program management phase will not be affected by the stated provisions in §____.25 of this rule.

In further connection with the treatment of A–102 as it impacts on public housing development and modernization, there are two observations that we wish to highlight for public comment:

1. In HUD's public housing development and modernization regulations (24 CFR Parts 941 and 968, respectively), alternative means are provided for construction or equipment contractors beyond the single bonding procedure set out in §____.36(h)(2) of the Common Rule. The Common Rule requires a 100% performance or payment bond for contracts exceeding $100,000. In contrast, HUD's rules (e.g., 24 CFR 968.12(c)) provide for a variety of alternatives. While 100% bonds are among these, HUD allows for separate performance and payment bonds, each for 50 percent or more of the contract price, or for a 20 percent cash escrow, or for a 25 percent letter of credit. HUD's rules on bonding are intended to promote greater opportunity for participation in construction and equipment contracting by small or minority or women-owned firms, and the Department's experience with these requirements has been a successful one. Accordingly, public comment is invited concerning whether the final rule should continue to provide for alternative means of meeting bonding requirements, or whether the 100% bond requirement in the Common Rule is an appropriate substitute requirement for public housing development and modernization programs of the Department. (It should be noted that several important HUD programs already provide for 100% bonding in a manner comparable to the Common Rule.)

2. Section ____.50(c) of the Common Rule establishes that HUD will have 60 days after *receipt* of financial and other reports (see §____.50(b)) to make adjustments to allowable costs. This requirement poses a problem if an audit is performed or if there are disagreements on the cost adjustments. Past experience shows that it is unworkable to make cost adjustments before audit. Therefore, the Department seeks comment on its alternative suggestion that Federal awarding agencies be required to make upward or downward adjustments to the allowable costs within 60 days after *approval* of the reports required in §____.50(b).

The above-referenced specific concerns are not believed to be an exhaustive list. Because A–102 requirements have not historically been applied by HUD to its major public housing development and modernization programs, the Department's regulations and forms for those programs do not reflect a history of conformity with the OMB Circular. A considerable effort must be undertaken by HUD, in the coming months before this rule is published for effect, to conform its financial management practices to the requirements of the Circular and the Common Rule. There has been insufficient time, since the legislative change providing for capital grant financing, for a complete revamping of the procedures governing administration of these programs. Furthermore, as noted elsewhere in this preamble, annual contributions contracts between HUD and the public housing agencies provide for many practices and procedures that must be reexamined and possibly altered in light of this rulemaking. The Department is especially interested in hearing from affected members of the public who have had experience both with the procedures set out in Circular A–102 and those reflected in HUD's public housing regulations and contracts. Specific differences in these procedures, how they might be resolved, and to what extent a change in HUD practice is feasible or tolerable, all are concerns that will guide the Department in making the transition to new procedures under the Common Rule as it relates to public housing development and modernization. Where particularly difficult problems are identified—in the course of HUD's ongoing adaptation to A–102 or by virtue of public participation in this rulemaking—the final rule may provide specifically for the retention of some features of HUD's current procedures.

All grants administration provisions in program regulations which are inconsistent with the proposed rule would be rescinded, except to the extent they are approved as a deviation by OMB at or after the time the rule is made final. All grants administration provisions of uncodified program manuals, handbooks and other materials which are inconsistent with the proposed rule will be superseded, except to the extent they are approved as a deviation by OMB at or after the time after the rule is made final.

This rule also proposes to establish several new parts within Subtitle A of Title 24 of the Code of Federal Regulations, to contain the regulations that set forth administrative requirements and cost principles for HUD assistance programs. A new Part 85 would be established for OMB Circular A–102 requirements, and additional parts would be reserved for future rulemaking to implement the requirements of other OMB financial management circulars.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1959. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item number 1028 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) under Executive Order 12291 and the Regulatory Agenda.

The Catalog of Federal Domestic Assistance program numbers affected by this rule are 14.174, 14.218, 14.219, 14.221, 14.223, 14.225, 14.227, 14.230, 14.231, 14.401, 14.850, and 14.852.

List of Subjects

24 CFR Part 85

Grant administration, State and local governments, Cooperative agreements.

24 CFR Part 111

Fair housing, Cooperative agreements, Grant programs: housing and community development.

24 CFR Part 511

Rental Rehabilitation grants, Administrative practice and procedure, Grant programs: housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: Housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 571

Community development block grants, Grant programs: housing and community development, Grant programs: Indians, Indians.

24 CFR Part 575

Grant programs: Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

24 CFR Part 850

Grant programs: housing and community development, Relocation assistance, Rental housing, Low and moderate income housing, Cooperatives.

24 CFR Part 905

Grant programs: housing and community development, Grant programs: Indians, Indians, Loan programs: Indians Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 941

Loan programs: housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

24 CFR Part 968

Loan programs: housing and community development, Public housing, Reporting and recordkeeping requirements, Substantial rehabilitation.

24 CFR Part 990

Grant programs: housing and community development, Low and moderate income housfng, Public housing.

Accordingly, the Department of Housing and Urban Development (HUD) amends Title 24, Code of Federal Regulations as follows:

It is proposed that Title 24 of the Code of Federal Regulations be amended by adding a new Part 85, to read as set forth at the end of this document.

Dated: June 1, 1987.

Carl D. Covitz,

Under Secretary.

PART 85—UNIFORM ADMINISTRATIVE REQUIREMENTS

Subpart A—General

Sec.

85.1 Purpose and scope of this part.
85.2 Scope of subpart.
85.3 Definitions.
85.4 Applicability.
85.5 Effect on other issuances.
85.6 Exceptions.

Subpart B—Pre-Award Requirements

85.10 Forms for applying for grants.
85.11 State plans.
85.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

85.20 Standards for financial management systems.
85.21 Payment requirements.
85.22 Allowable costs.
85.23 Period of availability of funds.
85.24 Matching or cost sharing.
85.25 Program income.
85.26 Non-Federal audit.

Changes, Property, and Subawards

85.30 Changes under discretionary (project) awards.
85.31 Real property.
85.32 Equipment.
85.33 Supplies.
85.34 Copyrights.
85.35 Subawards to debarred and suspended parties.
85.36 Procurement.

Reports, Records Retention, and Enforcement

85.40 Monitoring and reporting program performance.
85.41 Financial reporting.
85.42 Retention and access requirements for records.
85.43 Enforcement.
85.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

85.50 Closeout.
85.51 Later disallowances and adjustments.
85.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

DEPARTMENT OF JUSTICE

28 CFR Part 66

ADDRESS: Comments should be sent to: Jack Nadol, Deparment of Justice, Office of Justice Programs, 633 Indiana Avenue, NW., Room 942, Washington, DC 20531, (202) 724–7608.

FOR FURTHER INFORMATION CONTACT: Jack Nadol, Department of Justice, Office of Justice Programs, 633 Indiana Avenue, NW., Room 942, Washington, DC 20531, (202) 724–7608.

ADDITIONAL SUPPLEMENTARY INFORMATION: Drug Enforcement Administration (DEA) contracts that are issued under 21 U.S.C. 873(a)(7) are exempt. However, in the event DEA is authorized to fund grants to state and local agencies in the future, DEA would be subject to OMB Circular A–102 unless exempt by Congress.

The United States Marshals Service solicits comments on their continuous use of a two page Marshals Service application form in lieu of the standard A–102 application form. Request for copies of the U.S. Marshals Service form

should be directed to Joseph B. Enders, Chief, Operations Support Division, (202) 285–1271.

With respect to grants and cooperative agreements of the Office of Justice Programs (OJP), this regulation replaces Appendix 3 of OJP Guideline Manual M 7100.1C Financial and Administrative Guide for Grants.

List of Subjects in 28 CFR Part 66

Accounting, Administrative practice and procedure, Grant programs—Law, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 28 of the Code of Federal Regulations be amended by adding Part 66 as set forth at the end of this document.

Arnold I. Burns,

Acting Attorney General.

PART 66—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

66.1 Purpose and scope of this part.
66.2 Scope of subpart.
66.3 Definitions.
66.4 Applicability.
66.5 Effect on other issuances.
66.6 Exceptions.

Subpart B—Pre-Award Requirements

66.10 Forms for applying for grants.
66.11 State plans.
66.12 Special grant or subgrant conditions for "high-risk" recipients.

Subpart C—Post-Award Requrements

Financial Administration

66.20 Standards for financial management systems.
66.21 Payment requirements.
66.22 Allowable costs.
66.23 Period of availability of funds.
66.24 Matching.
66.25 Program income.
66.26 Non-Federal audit.

Changes, Property, and Subawards

66.30 Changes under discretionary awards.
66.31 Real property.
66.32 Equipment.
66.33 Supplies.
66.34 Copyrights.
66.35 Subawards to debarred and suspended parties.
66.36 Procurement.

Reports, Record Retention, and Enforcement

66.40 Monitoring and reporting program performance.
66.41 Financial reporting.
66.42 Retention and access requirements for records.
66.43 Enforcement.
66.44 Termination for convenience.

Subpart D— After-the-Grant Requirements

66.50 Closeout.
66.51 Later disallowances and adjustments.
66.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Omnibus Crime Control and Safe Street Act of 1968, 42 U.S.C. 3711, *et seq.*, (as amended), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, (as amended), Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*, (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351–4353.

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Administration and Management

29 CFR Part 97

ADDRESS: Written comments shall be mailed to: Janice M. Sawyer, Director of Administrative and Procurement Programs, Room S–1524, U.S. Department of Labor, Washington, DC 20210. Telephone: 202–523–6415.

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Room S–1522, U.S. Department of Labor, Washington, DC 20210. Telephone: 202–523–9174.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Labor previously had published regulations implementing both OMB Circulars A–102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and A–110, Uniform Administrative Requirements for Grants and Cooperative Agreements to Non-profit Institutions, at 41 CFR Part 29–70. It will be proposed in a later rulemaking that 41 CFR Part 29–70 be amended by deleting from its coverage State and local governments.

Paperwork Reduction Act

States are required to follow the same financial, property and procurement laws and procedures as they would when spending their own State funds. Local and other governmental recipients are required to follow minimum, uniform, generic management standards.

List of Subjects in 29 CFR Part 97

Accounting, Administrative practice and procedure, Grant programs—grants and administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 29 of the Code of Federal Regulations be amended by adding a new Part 97 as set forth at the end of this document.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

PART 97—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

97.1 Purpose of scope of this part.
97.2 Scope of subpart.
97.3 Definitions.
97.4 Applicability.
97.5 Effect on other issuances.
97.6 Exceptions.

Subpart B—Pre-Award Requirements

97.10 Forms for applying for grants.
97.11 State plans.
97.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

97.20 Standards for financial management systems.
97.21 Payment requirements.
97.22 Allowable costs.
97.23 Period of availability of funds.
97.24 Matching or cost-sharing.
97.25 Program income.
97.26 Non-Federal audit.

Changes, Property, and Subawards

97.30 Changes under discretionary (project) awards.
97.31 Real property.
97.32 Equipment.
97.33 Supplies.
97.34 Copyrights.
97.35 Subawards to debarred and suspended parties.
97.36 Procurement.

Reports, Records Retention, and Enforcement

97.40 Monitoring and reporting program performance.
97.41 Financial reporting.
97.42 Retention and access requirements for records.
97.43 Enforcement.
97.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

97.50 Closeout.
97.51 Later disallowances and adjustments.
97.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301; OMB Circular A–102.

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1470

ADDRESS: Comments should be sent to: FMCS, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Daniel P. Dozier, 653–5305.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Due to the nature of the grantees of the Federal Mediation and Conciliation Service and/or their representatives as tax supported or dues paying entities, the Service does not consider in kind contributions to be an acceptable grantee match. Because the grants program has a very small annual appropriation, grantee charges to their grant projects for indirect costs are discouraged.

List of Subjects in 29 CFR Part 1470

Accounting, Administrative practice and procedure, Grant programs, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 29 of the Code of Federal Regulations be amended by adding Part 1470 as set forth at the end of this document.

Kay McMurray,

Director.

Part 1470—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

1470.1 Purpose and scope of this part.
1470.2 Scope of subpart.
1470.3 Definitions.
1470.4 Applicability.
1470.5 Effect on other issuances.
1470.6 Exceptions.

Subpart B—Pre-Award Requirements

1470.10 Forms for applying for grants.
1470.11 State plans.
1470.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1470.20 Standards for financial management systems.
1470.21 Payment requirements.
1470.22 Allowable costs.
1470.23 Period of availability of funds.
1470.24 Matching or cost sharing.
1470.25 Program income.
1470.26 Non-Federal audits.

Changes, Property, and Subawards

1470.30 Changes under discretionary (project) awards.
1470.31 Real property.
1470.32 Equipment.
1470.33 Supplies.
1470.34 Copyrights.
1470.35 Subawards to debarred and suspended parties.
1470.36 Procurement.

Reports, Records Retention, and Enforcement

1470.40 Monitoring and reportimg program performance.
1470.41 Financial reporting.
1470.42 Retention and access requirements for records.
1470.43 Enforcement.
1470.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1470.50 Closeout.
1470.51 Later disallowances and adjustments.
1470.52 Collection of amounts due.

Subpart E—Entitlements (Reserved)

Authority: The Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a).

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 278

ADDRESS: Office of the Assistant Secretary of Defense (Comptroller), Management Systems, Room 1A658, The Pentagon, Washington, DC 20301–1100.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald D. Good, or Mr. William L. Blumberg. Telephone (202) 697–8282.

ADDITIONAL SUPPLEMENTARY INFORMATION: With this rule, the Department of Defense will adopt rules and regulations governing the administration and use of grants and cooperative agreements with state and local government. This "common" rule establishes consistency and uniformity among the Office of the Secretary of Defense, Military Departments and Defense Agencies in the employment and management of grants and cooperative agreements with state, local, and federally recognized Indian tribal governments. There are no deviations or differences between the model regulation promulgated by the Office of Management and Budget, which forms the basis for the "common" rule, and the Department of Defense regulation governing the same.

List of Subjects in 32 CFR Part 278

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

Accordingly, Title 32 is proposed to be amended by adding Part 278 to read as set forth at the end of this document.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1987.

PART 278—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

278.1 Purpose and scope of this part.
278.2 Scope of subpart.
278.23 Definitions.
278.4 Applicability.
278.5 Effect on other issuances.
278.6 Exceptions.

Subpart B—Pre-Award Requirements

278.10 Forms for applying for grants.
278.11 State plans.
278.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

278.20 Standards for financial management systems.
278.21 Payment requirements.
278.22 Allowable costs.
278.23 Period of availability of funds.
278.24 Matching or cost sharing.
278.25 Program income.
278.26 Non-Federal audit.

Changes, Property, and Subawards

278.30 Changes under discretionary (project) awards.
278.31 Real property.
278.32 Equipment.
278.33 Supplies.
278.34 Copyrights.
278.35 Subawards to debarred and suspended parties.
278.36 Procurement.

Reports, Records Retention, and Enforcement

278.40 Monitoring and reporting program performance.
278.41 Financial reporting.
278.42 Retention and access requirements for records.
278.43 Enforcement.
278.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

278.50 Closeout.
278.51 Later disallowances and adjustments.
278.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

ADDRESS: Comments should be sent to: Hazel Fiers, Office of Management, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3021, Federal Office Building No. 6), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Hazel Fiers, Telephone (202) 472-5123.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Secretary proposes in this document to establish a new Part 80 to implement the common regulations to be used by all Federal agencies under Office of Management and Budget (OMB) Circular A-102. The Secretary simultaneously proposes to make technical amendments to the existing Part 74 to limit its application to the institutions covered by OMB Circular A-110. The proposed changes to Part 74 are contained in a separate proposed rulemaking document published elsewhere in this issue of the **Federal Register.**

The Department of Education currently implements both OMB Circulars A-102 and A-110 in Part 74 of the Department's regulations (34 CFR Part 74). Circular A-110 applies to institutions of higher education, hospitals, and other nonprofit organizations and contains provisions similar to those contained in Circular A-102 for State and local governments and Indian tribal organizations. However, due to the significant changes contained in the proposed common regulations implementing revised Circular A-102, the proposed common regulations and current Circular A-110 can no longer conveniently be implemented together. As a result, State and local governments and Indian tribal organizations would be subject to the less burdensome requirements in Part 80 and other grantees would be subject to the requirements of Part 74. However, the Department is aware that the President's Council on Management Improvement has initiated a task force to review Circular A-110. If, as a result of that review, the differences between A-110 and A-102 are reduced sufficiently, the Department may again implement the two Circulars in a single set of regulations.

Section ____.5 of the common regulations indicates that certain documents containing provisions inconsistent with the common regulations are superseded by the common regulations. The Secretary intends to identify any codified program regulations that are inconsistent with the common regulations. The Secretary plans to revoke, in the final rulemaking document, any inconsistent program regulations that are not required by statute or by the nature of the program as authorized in the program statute. To assist in this process of identifying inconsistent provisions, the Secretary seeks comments on any program regulations that may be appropriate to revoke.

The Secretary is aware that Parts 75 and 76 contain cross-references to Part 74 and that these references should be revised to refer also to the new Part 80. The Secretary will conduct a review of Parts 75 and 76 during the comment period for these regulations. As a result, when Part 80 is published as a final regulation, the Secretary will also publish appropriate amendments to Part 75 and 76 to include cross-references to Part 80.

The Secretary also proposes three changes to the common regulations. The first change is necessary under section 412 of the Department of Education Organization Act (DEOA). 20 U.S.C. 3472. Under this section the Secretary may delegate the functions of the Department only to officers and employees of the Department. However, § ____.6(b) of the proposed common regulations would have the effect of delegating one of the Secretary's functions to employees of the Office of Management and Budget—authorizing OMB to grant exceptions to the common regulations as promulgated by the Secretary for the programs administered by the Department of Education. In order to avoid any conflict with the DEOA, the Secretary proposes to revise §____.6(b) so that the Secretary would authorize exceptions to the common regulations after consultation with appropriate officials of OMB.

The second change is necessary to ensure that disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid program (20 U.S.C. 631-647) are administered consistently with their statutory purpose. Under the disaster assistance program the Department provides assistance to local educational agencies (LEAs) that have been affected by certain major disasters. Under the construction program the Department provides assistance to LEAs to build educational facilities. Under the statute an LEA must use the facility to educate eligible children. However, if there are no longer any eligible children to educate at the facility, the facility may be used for any purpose subject only to the requirement that the LEA maintain accessibility to the facility for 20 years after its construction. The application of §____.31(c) is inappropriate in the context of these statutory programs. A similar analysis applies to the equipment provisions of §____.32 (c), (d), and (e). Therefore, the Secretary proposes to except the disaster assistance program and the Impact Aid construction program from the requirements of §§ 80.31(c) and 80.32 (c), (d), and (e).

The last change is necessary to implement the five-year record retention rule required by section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1237f). Section ____.42(b) of the proposed common regulations requires a recipient to maintain a record for only 3 years unless a longer retention period is necessary to resolve issues pursuant to any litigation, claim, negotiation, audit, or other action involving the record. The Secretary proposes to add a paragraph (b)(4) to §____.42 of the proposed common regulations to clarify that a recipient must maintain a record for a minimum of five years after the completion of the activity for which funds are used under an "applicable program" covered by GEPA.

This proposed amendment would have the effect of establishing a minimum 5-year record retention period under most programs administered by the Department. However, we note that certain programs such as those programs administered by the Commissioner of the Rehabilitative Services Administration under the Rehabilitation Act of 1973, as amended, would still be subject to the 3-year record retention rule contained in the common regulations.

Finally, the Secretary proposes to add authority citations after every substantive provision of the common regulations. These authority citations are required under section 431 of GEPA (20 U.S.C. 1232(a)(2)).

List of Subjects in 34 CFR Part 80

Accounting, Administrative practice and procedure, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

Dated: June 2, 1987.

[Catalog of Federal Domestic Assistance Number: Not Applicable]

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new 34 CFR Part 80 as set forth below.

1. Part 80 is added as set forth at the end of this document:

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
80.1 Purpose and scope of this part.
80.2 Scope of subpart.
80.3 Definitions.
80.4 Applicability.
80.5 Effect on other issuances.
80.6 Exceptions.

Subpart B—Pre-Award Requirements

80.10 Forms for applying for grants.
80.11 State plans.
80.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

80.20 Standards for financial management systems.
80.21 Payment requirements.
80.22 Allowable costs.
80.23 Period of availability of funds.
80.24 Matching and cost sharing.
80.25 Program income.
80.26 Non-Federal audit.

Changes, Property, and Subawards

80.30 Changes under discretionary (projects) awards.
80.31 Real property.
80.32 Equipment.
80.33 Supplies.
80.34 Copyrights.
80.35 Subawards to debarred and suspended parties.
80.36 Procurement.

Reports, Records Retention, and Enforcement

80.40 Monitoring and reporting program performance.
80.41 Financial reporting.
80.42 Retention and access requirements for records.
80.43 Enforcement.
80.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

80.50 Closeout.
80.51 Later disallowances and adjustments.
80.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Appendix to Part 80—Audit Requirements for State and Local Governments.

Authority: 20 U.S.C. 3474; OMB Circular A-102, unless otherwise noted.

2. Part 80 is further amended, as follows.

a. Section 80.22 is amended by revising paragraph (b) to read as follows:

§ 80.22 Allowable costs.

* * * * *

(b) For each kind of organization, there is a set of Federal principles for determining allowable costs. For the costs of a State, local, or Indian tribal government, the Secretary applies the cost principles in OMB Circular A-87, as amended on June 9, 1987.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

b. A note is added following § 80.26, to read as follows:

§ 80.26 Non-Federal audit.

* * * * *

Note.—The requirements for non-Federal audits are contained in the Appendix to Part 80—Audit Requirements for State and Local Governments.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

c. Section 80.31 is amended by adding a new paragraph (d) to read as follows:

§ 80.31 Real property.

* * * * *

(d) The provisions of paragraph (c) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

d. Section 80.32 is amended by adding a new paragraph (g) to read as follows:

§ 80.32 Equipment.

* * * * *

(g) The provisions of paragraphs (c), (d), and (e) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

e. Section 80.42(b) is amended by adding a new paragraph (b)(4) to read as follows:

§ 80.42 Retention and access requirements for records.

* * * * *

(b) *Length of retention period.* * * *

(4) A recipient that receives funds under a program subject to 20 U.S.C. 1232f (section 437 of the General Education Provisions Act) shall retain records for a minimum of five years after the starting date specified in paragraph (c) of this section.

* * * * *

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

f. An authority citation is added after each section in Part 80 to read as follows:

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

g. Appendix G—Audit Requirements for State and Local Governments at the end of 34 CFR Part 74 is redesignated as "Appendix to Part 80—Audit Requirements for State and Local Governments".

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1207

ADDRESS: Comments should be sent to the Director, Program Policy and Evaluation Division, National Archives and Records Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas at 202-523-3214 (FTS 523-3214).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) program provides grants, when funds are available, to State and local governments, historical societies, archives, libraries and associations for the preservation, arrangement and description of historical records and for a broad range of archival training and development programs. The Catalog of Federal Domestic Assistance number is 89.003. The National Archives and Records Administration is participating in the common rule process based upon current funding for NHPRC through FY 1987. OMB recommends that the NHPRC program not be funded in FY 1988.

List of Subjects in 36 CFR Part 1207

Accounting, Administrative practice and procedure, Grant programs—archives and records, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 36 of the Code of Federal Regulations be amended by adding Part 1207 as set forth at the end of this document.

Frank G. Burke,

Acting Archivist of the United States.

PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1207.1 Purpose and scope of this part.
1207.2 Scope of subpart.
1207.3 Definitions.
1207.4 Applicability.
1207.5 Effect on other issuances.
1207.6 Exceptions.

Subpart B—Pre-Award Requirements

1207.10 Forms for applying for grants.
1207.11 State plans.
1207.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1207.20 Standards for financial management systems.
1207.21 Payment requirements.
1207.22 Allowable costs.
1207.23 Period of availability of funds.
1207.24 Matching or sharing.
1207.25 Program income.
1207.26 Non-Federal audit.

Changes, Property, and Subawards

1207.30 Changes under discretionary (project) awards.
1207.31 Real property.
1207.32 Equipment.
1207.33 Supplies.
1207.34 Copyrights.
1207.35 Subawards to debarred and suspended parties.
1207.36 Procurement.

Reports, Records Retention, and Enforcement

1207.40 Monitoring and reporting program performance.
1207.41 Financial reporting.
1207.42 Retention and access requirements for records.
1207.43 Enforcement.
1207.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1207.50 Closeout.
1207.51 Later disallowances and adjustments.
1207.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 44 U.S.C. 2102.

VETERANS ADMINISTRATION

38 CFR Part 43

ADDRESS: Comments should be sent to: The Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 21, 1987.

FOR FURTHER INFORMATION CONTACT: Gail A. Gompf, Director, Office of Intergovernmental Affairs (00A1), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3116.

ADDITIONAL SUPPLEMENTARY INFORMATION: This new authority codifies the longstanding OMB Circular A-102 used in whole or in part by all Federal agencies in their grant programs. The effect upon the Veterans Administration (VA) will be felt in its State home construction grants and its State cemetery grants. Specifically, the regulations will affect applicants for Federal assistance from the VA for construction of State extended care facilities and State cemeteries. Applicants shall follow all applicable standard instructions promulgated by these proposed regulations. All other grant administration provisions of codified program regulations, program manuals, handbooks, and other nonregulatory materials which are inconsistent with these proposed regulations are superseded, except to the extent that they are required by statute, or authorized in accordance with certain exceptions (see § 43.6).

List of Subjects in 38 CFR Part 43

Accounting, Administrative practice and procedure, Grant programs—State cemeteries and State home facilities, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 38 of the Code of Federal Regulations be amended by adding Part 43 as set forth at the end of this document.

Approved: May 21, 1987.

Thomas K. Turnage,

Administrator.

PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
43.1 Purpose and scope of this part.
43.2 Scope of this subpart.
43.3 Definitions.
43.4 Applicability.
43.5 Effect on other issuances.
43.6 Exceptions.

Subpart B—Pre-Award Requirements

43.10 Forms for applying for grants.
43.11 State plans.
43.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

43.20 Standards for financial management systems.
43.21 Payment requirements.
43.22 Allowable costs.
43.23 Period of availability of funds.
43.24 Matching or cost sharing.
43.25 Program income.
43.26 Non-Federal audit.

Changes, Property, and Subawards

43.30 Changes under discretionary (project) awards.
43.31 Real property.
43.32 Equipment.
43.33 Supplies.
43.34 Copyrights.
43.35 Subawards to debarred and suspended parties.
43.36 Procurement.

Reports, Records Retention, and Enforcement

43.40 Monitoring and reporting program performance.
43.41 Financial reporting.
43.42 Retention and access requirements for records.
43.43 Enforcement.
43.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

43.50 Closeout.
43.51 Later disallowances and adjustments.
43.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 38 U.S.C. 210, 38 U.S.C. 612, E.O. 11541.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30 and 33

ADDRESS: Comments should be sent to: Frederick L. Meadows, Chief, Grants Policy and Procedures Branch (PM-216F), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5268 (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Richard Mitchell, Grants Policy and Procedures Branch (PM-216F), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5297 (This is not a toll free number.)

ADDITIONAL SUPPLEMENTARY INFORMATION: Federal Agencies are jointly proposing a common rule to establish consistency and uniformity among all Federal assistance awarding agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments. The common rule, as part of the President's regulatory relief program, is further designed to reduce the burden of regulation and paperwork for the Environmental Protection Agency's (EPA) assistance recipients. When effective, this rule will supersede certain of EPA's general assistance regulations at 40 CFR Parts 30 and 33.

EPA intends to have a general assistance regulation at 40 CFR Part 30 consisting of two Subparts:

(1) Subpart A (applicable to State and local recipients) will be the common rule with EPA additions, including paragraphs from the current 40 CFR Parts 30 and 33; and

(2) Subpart B will include those paragraphs of the current Part 30 which are applicable to other than State and local recipients.

The additions to become part of the common rule at Subpart A include:

(1) 40 CFR Part 30, Subpart L, "How are Disputes Between EPA Officials and Me Resolved?" EPA's disputes provisions have proven invaluable to the orderly reconciliation of disputes between EPA and its recipients, which may arise during the course of any grant project and are essential for the continued good management of EPA's many programs. Specific provisions for EPA review of delegated State decisions under the Clean Water Act construction grant program remain at 40 CFR 35.3030.

(2) Buy American, 40 CFR 33.710 which is required by section 215 of the Clean Water Act.

(3) Payments to Consultants, 40 CFR 33.280 which is required by Pub. L. 99–591.

(4) Quality Assurance, 40 CFR 30.503. The majority of EPA's grant awards involve the development and use of scientific and/or technical data. Reports, findings, data, etc., developed under such grants are used for a variety of purposes, each having a potential for wide-ranging environmental impacts nationally. The potential impacts include such areas as: Regulatory requirements for the discharge, transportation, and disposal of pollutants; use and methods of applying chemical products; potable water quality standards; etc. Because of the sensitive nature of these impacts, it is imperative that EPA require recipients to submit with their applications for assistance a quality assurance program designed to ensure that the project will result in the highest quality scientific and technical data possible.

(5) EPA intends to add a list of the principal environmental statutes under which our assistance programs operate.

EPA's Subpart B will contain those Sections of 40 CFR Part 30 which will be applicable to grantees other than State and local governments (i.e., institutions of higher education, hospitals, or other nonprofit organizations). Listed below are those Sections of the current 40 CFR Part 30 which we tentatively plan to delete (or revise) from the regulation as they are applicable only to State and local governments. Those sections *not* listed will become 40 CFR Part 30, Subpart B (recipients other than State and local) and will be renumbered as appropriate. EPA proposes to delete the the following sections from the current Part 30 as they apply only to State and local governments':

40 CFR	Reason for deletion
30.302(d) (2) and (3).	Application requirements for State and local governments only.
30.303(b) (1) and (2).	Application requirements for State and local governments only.
30.501(a)(2)	State and local requirement for submitting Financial Status Report (SF269).
30.505(b)(2)	Report submittal required only for construction grant projects.
30.540(b)	Requirements for audits of State and local governments only.
Appendix E	Audit requirements for State and local governments only.

EPA intends to revise the following appendices in 40 CFR Part 30 since they include certain information applicable to State and local governments only:

Appendix A..... List of all EPA assistance programs including those for State and local recipients.

Appendix D..... List of reporting requirements for all recipients, including State and local.

Publication of the common rule will require changes in our current regulation at 40 CFR Part 33, Procurement Under Assistance Agreements, to delete or revise certain sections which are applicable only to State and local governments and, therefore, will be superceded by the common rule. Those remaining will be applicable only to institutions of higher education, hospitals, and other nonprofit organizations. Listed below are those sections which EPA proposes to delete or revise:

40 CFR	Reason for deletion/revision
33.110(e)(5)	Delete this section because it is a Procurement requirement related only to Superfund remedial action construction awards.
33.210(f)	Delete this section as it relates to formal advertising only for remedial action awards under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).
33.240	Revise this section to eliminate fair share requirements for women's businesses since they do not apply to institutions of higher education, hospitals, and other nonprofit organizations.
33, Subpart C	Delete this subpart because it is applicable only to the wastewater treatment construction grant program.
33, Subpart E	Delete this subpart because it is applicable only to remedial action awards under CERCLA and are not required for recipients other than State and local governments.
33, Subpart F	Delete this Subpart because it contains Subagreement provisions and model subagreements clauses which do not apply to institutions of higher education, hospitals, and other nonprofit organizations.

In addition to items discussed above, EPA would like to bring the following matters to the attention of its readers. The current 40 CFR Part 30, Subpart I includes a provision for annuling assistance agreements if the recipient, without good cause, inordinately delayed or made no substantial progress on the project, obtained the award by fraud or misrepresentation, or practices corrupt administrative procedures. As presently codified, annulment can result in recovery of all funds received for the project including those already expended. EPA is considering adding a similar provision (specific to EPA) to the common rule and requests comments from its readers. Because of the potentially very sensitive environmental ramifications of EPA's grants, we need to have the right to annul awards to recipients whose performance is determined, after careful review and opportunity for consultation, to be so onerous as to require annulment.

In the conduct of EPA's wastewater treatment construction grants program and during phase I of the Superfund remedial response program, recipients may be allowed to retain the services of the same architect or engineer during subsequent work on the project. This provision has been invaluable in these programs as it helps ensure continuity through the life of a project since the architect or engineer is familiar with the project and it minimizes procurement actions for the recipient. EPA is

considering adding such a provision to the common rule (specific to EPA) and invites comments on this topic from its readers.

The current 40 CFR Part 30, Subpart K deals with policies and procedures applicable to patents and inventions made under EPA assistance awards. EPA had considered adding a similar paragraph to the common rule. However, we understand that the Office of Management and Budget intends to include invention right provisions in the common rule prior to promulgation. Different provisions may apply to grants awarded under Section 6914 of the Resource Conservation and Recovery Act. EPA intends to address this matter in its final rule.

List of Subjects in 40 CFR Parts 30 and 33

Grant programs.

It is proposed that Title 40 of the Code of Federal Regulations be amended as set forth below.

Lee M. Thomas,

Administrator.

Dated: June 1, 1987.

PART 30—GENERAL REGULATIONS FOR ASSISTANCE PROGRAM

1. It is proposed to revise the heading for Part 30 to read as set forth above.

2. The authority citation for Part 30 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.

3. It is proposed to amend Part 30 by removing the subpart designations in the current text and by designating the headings and sections as "Subpart B—General Regulation for Assistance Programs for Other Than State and Local Governments".

4. It is proposed to further amend Part 30 by adding a new Subpart A to read as set forth at the end of this document.

Subpart A—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

Sec.

30.1 Purpose and scope of this part.
30.2 Scope of subpart.
30.3 Definitions.
30.4 Applicability.
30.5 Effect on other issuances.
30.6 Exceptions.

Pre-Award Requirements

30.10 Forms for applying for grants.
30.11 State plans.
30.12 Special grant or subgrant conditions for "high-risk" grantees.

Post-Award Requirements

Financial Administration

30.20 Standards for financial management systems.
30.21 Payment requirements.
30.22 Allowable costs.
30.23 Period of availability of funds.
30.24 Matching or cost sharing.
30.25 Program income.
30.26 Non-Federal audit.

Changes, Property, and Subawards

30.30 Changes under discretionary (project) awards.
30.31 Real property.
30.32 Equipment.
30.33 Supplies.
30.34 Copyrights.
30.35 Subawards to debarred and suspended parties.
30.36 Procurement.

Reports, Record Retention, and Enforcement

30.40 Monitoring and reporting program performance.
30.41 Financial reporting.
30.42 Retention and access requirements for records.
30.43 Enforcement.
30.44 Termination for convenience.

After-the-Grant Requirements

30.50 Closeout.
30.51 Later disallowances and adjustments.
30.52 Collection of amounts due.

Entitlements [Reserved]

5. It is proposed to further amend Part 30, Subpart A as follows:

a. It is proposed to add a new § 30.13 to read as follows:

§ 30.13 Principal environmental statutes applicable to EPA assistance awards.

Recipients shall comply with all applicable Federal laws including:

(a) National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) Flood Disaster Protection Act of 1973 (Pub. L. 93–234, December 13, 1973).

(c) Clean Air Act (42 U.S.C. 7606).

(d) Federal Water Pollution Control Act, as amended (33 U.S.C. 1368).

(e) Safe Drinking Water Act (42 U.S.C. 300h–3(e)).

b. It is proposed to amend § 30.36 by adding new paragraphs (c)(5), and (j) to read as follows:

§ 30.36 Procurement.

(c) * * *

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the "Buy American" requirements in paragraphs (c)(5)(i)–(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference for the use of domestic material in the construction of EPA funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The recipient will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors he considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the "Buy American" provision in 40 CFR 33.1030.

* * * * *

(j) *Payment to consultants.* (1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors to the maximum daily rate for a GS–18. (Recipients may, however, pay consultants more than this amount.) This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; recipients will pay these in accordance with their normal travel reimbursement practices. (Pub. L. 99–591)

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

4. EPA is adding a new § 30.45 on EPA's quality assurance provisions to the common rule to read as follows:

§ 30.45 Quality assurance.

(a) If the recipient's project involves environmentally related measurements or data generation, quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions shall be developed and implemented in accordance with Agency directives.

(b) State and local governments (except for recipients of wastewater treatment construction grants under Title II of the Clean Water Act, as amended, or assistance awards under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) shall have a quality assurance program plan acceptable to the award official. (For assistance in preparing a program plan, see "Guidelines and Specifications for Preparing Quality Assurance Program Plans" QMAS–004/80. This document (EPA–600/8–83–024; NTIS PB 83–219667) may be obtained from the National Technical Information Service, 5885 Port Royal Road, Springfield, Virginia 22161.)

d. It is proposed to add a new § 30.46 to read as follows:

§ 30.46 Disputes.

(a) Disagreements should be resolved at the lowest level possible.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements.

(c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

(1) For final decisions issued by an EPA disputes decision official at Headquarters, a request shall be filed with the Assistant Administrator responsible for the assistance program.

(2) For final decisions issued by a Regional disputes decision official, a request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, a request for reconsideration shall be filed with the Regional Administrator.

(d) The request shall include:

(1) A copy of the EPA disputes decision official's final decision;

(2) A statement of the amount in dispute;

(3) A description of the issues involved; and

(4) A concise statement of the objections to the final decision.

(e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record.

(f) Disputants are entitled to an informal conference with EPA officials.

(g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator.

(h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

(i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Adminstrator by registered mail, return receipt requested, and shall include:

(1) A copy of the Regional Adminstrator's decision; and

(2) A concise statement of the objections to the decision.

(j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action.

(k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant(s) to submit briefs in support of the petition for review and may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action.

(l) Reviews may not be requested of:

(1) Disapprovals of deviations under Subpart J;

(2) Bid protest decisions under Part 33;

(3) National Environmental Policy Act decisions under Part 6;

(4) Advanced wastewater treatment decisions of the Administrator; and

(5) Policy decisions of the EPA Audit Resolution Board.

6. It is proposed to further amend Part 30, Subpart B as follows:

a. EPA intends to delete §§ 30.302(d)(2) and (3) and 30.303(b)(1) and (2) since they include application requirements for State and local governments only.

b. EPA intends to delete § 30.501(a)(2) since it includes a requirement for submitting the Financial Status Report (SF 269) and is applicable to State and local governments only.

c. EPA intends to delete § 30.505(b)(2) since it is applicable only to wastewater treatment construction grant projects (i.e., not applicable to other than State and local governments).

d. EPA intends to delete § 30.540(b) as it includes audit requirements applicable only to State and local governments.

e. EPA intends to revise Appendix A to delete mention of those EPA assistance programs which are applicable to State and local governments only.

f. EPA intends to revise Appendix D to delete those reporting requirements applicable to State and local governments only.

g. EPA intends to delete Appendix E entirely since is applies only to State and local governments.

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

ADDRESS: Comments should be sent to Colonel C. Armstrong, Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management, Room 5512, Department of the Interior, Washington, DC 20240, Phone: 202–343–6431.

FOR FURTHER INFORMATION CONTACT: Colonel C. Armstrong, Chief, Division of Acquisition and Grants, Office of Acquisition and Property Management, Room 5512, Department of the Interior, Washington, DC 20240, Phone: 202–343–6431.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department published in the February 14, 1985 issue of the **Federal Register** (50 FR 6176), a rule which implemented Government-wide requirements established by the Office of Management and Budget (OMB) under OMB Circulars for the administration of assistance agreements. This rule included the implementation of OMB Circular A–102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments."

This proposed common rule which the agencies have agreed to publish implements the proposed revisions to OMB Circular A–102. The proposed

regulation is applicable to governmental recipients and subrecipients.

Upon adoption of a final rule, the Department's existing regulations at 43 CFR 12 which implement OMB Circular A–102 will be revised accordingly.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

It is proposed that Title 43 of the Code of Federal Regulations be amended as set forth below.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary, Policy, Budget and Administration.

May 22, 1987.

PART 12—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 98–502; OMB Circular A–128; OMB Circular A–102.

2. Part 12 is amended by adding Subpart C as set forth at the end of this document.

Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

Sec.

12.41 (____.1) Purpose and scope of this part.
12.42 (____.2) Scope of subpart.
12.43 (____.3) Definitions.
12.44 (____.4) Applicability.
12.45 (____.5) Effect on other issuances.
12.46 (____.6) Exceptions.

Pre-Award Requirements

12.50 (____.10) Forms for applying for grants.
12.51 (____.11) State plans.
12.52 (____.12) Special grant or subgrant conditions for "high-risk" recipients.

Post-Award Requirements

Financial Administration

12.60 (____.20) Standards for financial management systems.
12.61 (____.21) Payment requirements.
12.62 (____.22) Allowable costs.
12.63 (____.23) Period of availability of funds.
12.64 (____.24) Matching or cost sharing.
12.65 (____.25) Program income.
12.66 (____.26) Non-Federal audit.

Changes, Property, and Subawards

12.70 (____.30) Changes under discretionary (project) awards.
12.71 (____.31) Real property.
12.72 (____.32) Equipment.
12.73 (____.33) Supplies.
12.74 (____.34) Copyrights.
12.75 (____.35) Subawards to debarred and suspended parties.
12.76 (____.36) Procurement.

Rerports, Records retention, and Enforcement

12.80 (____.40) Monitoring and reporting program performance.
12.81 (____.41) Financial reporting.
12.82 (____.42) Retention and access requirements for records.
12.83 (____.43) Enforcement.
12.84 (____.44) Termination for convenience.

After-the-Grant Requirements

12.90 (____.50) Closeout.
12.91 (____.51) Later disallowances and adjustments.
12.92 (____.52) Collection of amounts due.

Entitlements [Reserved]

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 13

ADDRESS: Comments should be sent to: Office of the Comptroller, Policy Division, Room 721, Federal Emergency Management Division, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Arthur E. Curry, Office of the Comptroller, Policy Division (202) 646–3718.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency intends to incorporate the proposed rule as Part 13 of Title 44 of the Code of Federal Regulations.

Though the agency has never issued formal Assistance Standards in the Code of Federal Regulations, it did issue guidance for its recipients in FEMA's issuance of Financial Assistance Guidelines, CPG 1–32. These guidelines were issued to all of our assistance programs with the exception of the Disaster Program for the reasons cited:

As a general comment, the proposed revision to OMB Circular A–102 may work well for most Federal grant programs under which predetermined amounts of Federal funds from annual appropriations are made available to grantees with expenditures governed by OMB's applicable cost-principles. By contract, FEMA's Disaster Relief Assistance immediately follows unanticipated major disasters, and consists of open-ended reimbursement-type grants made from no-year appropriations to large numbers of disaster affected communities, many of which are very small and do not have approved indirect cost agreements.

We recommend that the OMB Circular A–102 exempt grants awarded under the Disaster Relief Act of 1974 42 USC 5121 et seq.

In the future, we may amend Part 13 of Title 44 as future needs dictate.

List of Subjects in 44 CFR Part 13

Accounting, Administrative practice and procedure, Grant programs—civil defense, Disaster, Hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 44 of the Code of Federal Regulations be amended by adding Part 13 as set forth at the end of this document.

Arthur E. Curry,

Chief, Policy Division.

PART 13—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

13.1 Purpose and scope of this part.
13.2 Scope of subpart.
13.3 Definitions.
13.4 Applicability.
13.5 Effect on other issuances.
13.6 Exceptions.

Subpart B—Pre-Award Requirements

13.10 Forms for applying for grants.
13.11 State plans.
13.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

13.20 Standards for financial management systems.
13.21 Payment requirements.
13.22 Allowable costs.
13.23 Period of availability of funds.
13.24 Matching or cost sharing.
13.25 Program income.
13.26 Non-Federal audit.

Changes, Property, and Subawards

13.30 Changes under discretionary (project) awards.
13.31 Real property.
13.32 Equipment.
13.33 Supplies.
13.34 Copyrights.
13.35 Subawards to debarred and suspended parties.
13.36 Procurement.

Reports, Records Retention, and Enforcement

13.40 Monitoring and reporting program performance.
13.41 Financial reporting.
13.42 Retention and access requirements for records.
13.43 Enforcement.
13.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

13.50 Closeout.

13.51 Later disallowances and adjustments.
13.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Reorg. Plan No. 3 1978, EO 12127; EO 12148.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 92

ADDRESS: Comments should be sent to Ms. Barbara S. Wamsley, Office of Assistance Policy and Systems Review, Department of Health and Human Services, Room 513–D, 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Mr. Joel B. Feinglass, Director, Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513–D, 200 Independence Ave. SW., Washington, DC 20201. Telephone (202) 245–7565.

ADDITIONAL SUPPLEMENTARY INFORMATION: At the present time, Department of Health and Human Services grants (and cooperative agreements) to State and local governments are governed by regulations codified at 45 CFR Part 74. Part 74 was originally promulgated in 1973 to implement Office of Management and Budget Circular A–102. The regulation was revised in 1978 to incorporate our implementation of OMB Circular A–110. Thus it governs grants to both governmental and non-governmental recipients (and sub-recipients). Consequently, when we adopt the proposed common rule, as 45 CFR Part 92, we must simultaneously amend Part 74.

We plan to publish a separate Notice of Proposed Rule-Making to seek public comments on those amendments to 45 CFR Part 74. Briefly, Part 74, in its entirety, would continue to govern HHS's grants to States under open-ended entitlement programs such as Aid to Families with Dependent Children and Medicaid. The common rule does not yet cover these programs—although its Subpart E has been reserved for that purpose. Part 74 would also continue to apply to grants to nongovernmental recipients—institutions of higher education, hospitals, other nonprofit organizations and for-profit concerns. Also, there are a number of HHS-specific provisions affecting governmental grantees that are now in 45 CFR Part 74 but not in the proposed common rule. We believe that at least some of these should remain in effect for grants to governments even after the common rule is adopted in final form. Our Notice of Proposed Rule-Making to amend 45 CFR Part 74 will identify each Part 74 provision that we propose to retain.

Here are some examples of Part 74 provisions that we expect to propose to retain for grants to governments:

—Section 74.62(a)(3) allows recipients to send audit reports under the Single Audit Act (as implemented in OMB Circular A–128) to the Regional HHS Inspector General for Audit, rather than to all affected HHS programs.

—Section 74.102(a) specifies that grantees shall address requests for prior approvals under Part 74 to the responsible Federal grants officer, and that approvals are not valid unless they are in writing and signed by specified officials of the granting agency.

—Section 74.173 specifies that the HHS hospital cost principles in Appendix E to Part 74 shall be used in determining the allowable costs of activities carried out by hospitals. (Those cost principles must be retained for HHS grants to State and local governments because hospitals in many cases are subgrantees or contractors under those grants.)

Finally, there are several important HHS grant programs that would not be affected by either the proposed common rule or the proposed amendments to 45 CFR Part 74. They are the various block grant programs created by Pub. L. 97–35, (The Omnibus Budget Reconciliation Act of 1981) or by other statutes.

List of Subjects in 45 CFR Part 92

Accounting, Administrative practice and procedure, Grant programs—health, Grant programs—social services, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 92 as set forth at the end of this document.

Dated: May 20, 1987.

Otis R. Brown,

Secretary of Health and Human Services.

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS (COMMON REGULATION)

Subpart A—General

Sec.
92.1 Purpose and scope of this part.
92.2 Scope of subpart.
92.3 Definitions.
92.4 Applicability.
92.5 Effect on other issuances.
92.6 Exceptions.

Subpart B—Pre-Award Requirements

92.10 Forms for applying for grants.
92.11 State plans.
92.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

92.20 Standards for financial management systems.
92.21 Payment requirements.
92.22 Allowable costs.
92.23 Period of availability of funds.
92.24 Matching or cost sharing.
92.25 Program income.
92.26 Non-Federal audit.

Changes, Property, and Subawards

92.30 Changes under discretionary (project) awards.
92.31 Real property.
92.32 Equipment.
92.33 Supplies.
92.34 Copyrights.
92.35 Subawards to debarred and suspended parties.
92.36 Procurement.

Reports, Records Retention, and Enforcement

92.40 Monitoring and reporting program performance.
92.41 Financial reporting.
92.42 Retention and access requirements for records.
92.43 Enforcement.
92.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

92.50 Closeout.
92.51 Later disallowances and adjustments.
92.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1157

ADDRESS: Comments should be sent to: Arthur Warren, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202 682–5418).

FOR FURTHER INFORMATION CONTACT: Arthur Warren or Larry Baden, Grants Officer (202 682–5403), 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Legislative Overrides

1. It has been determined that §____.11 of the Office of Management

and Budget (OMB) model regulation, "State plans," is not applicable to this Agency. That section would allow states to "simplify, consolidate and substitute plans" required to be submitted to federal agencies in order to receive federal assistance. Pursuant to subsection 5(g)(2) of the National Foundation on the Arts and the Humanities Act of 1965, as amended [20 U.S.C. 954(g)(2)] (hereinafter "NFAH Act"), state applicants are required to submit a specifically described state plan in order to receive basic state operating grant assistance. Because this Agency's authorizing legislation specifies certain information and assurances which must be included in this state plan, it would not be legally permissible to substitute a different state plan for this purpose, or to simplify the state plan requirements. Given timing requirements, it would be impractical to consolidate these plans with other state plans. Also, Congress has directed, at 20 U.S.C. 954(m), that information gathered through these plans be used to provide biennial reports to Congress on the state of the arts.

In addition, it should be noted that for the purposes of §____.10, the National Endowment for the Arts (hereinafter "Arts Endowment") considers the basic state grant program to be a "formula grant program" not subject to the application forms provision of §____.10 of the OMB common regulation. However, as a matter of policy, the agency has determined to adopt the "Changes" provision at §____.30 of the OMB common regulation for these grants. Adoption of this provision would be consistent with the intent of Congress for the administration of this program as reflected in the statutory state plan requirements and in the statutory requirement [20 U.S.C. 954(g)(1)] that these funds be used only for projects and productions in the arts which meet certain statutory standards or goals.

2. Sections ____.40(e) and ____.41(a)(7) of the OMB common regulation allow grantor agencies to waive any performance or financial reports required by the regulations. This waiver authority is inconsistent with the provisions of section 10 (d)(1) and (d)(2)(A) of the Arts Endowment's authorizing legislation [20 U.S.C. 959(d)]. Section 10(d)(1) provides: "The Chairperson of the National Endowment for the Arts . . . *shall conduct* a post-award evaluation of projects, procedures, and programs for which financial assistance is provided" under section 5(c). (Emphasis supplied.) Subsection (d)(2)(A) requires that:

> The recipient of financial assistance provided by either of the Endowments *shall submit* to the Chairperson of the Endowment involved—
>
> (i) a financial report containing such information as the Chairperson deems necessary to ensure that such financial assistance is expended in accordance with the terms and conditions under which it is provided; and
>
> (ii) a report describing the project, production or program carried out with such financial assistance; and
>
> (iii) if practicable, as determined by the Chairperson, a copy of such project, production or program. (Emphasis supplied.)

Because of the statutory requirements, the Arts Endowment is unable to exercise the provisions of the OMB common regulation regarding waiver of performance and financial reports.

3. Section § ____.4 makes the OMB common regulation applicable to all grant programs except where the regulation is inconsistent with federal statutes or regulations. The common regulation has been determined to be inconsistent with the statutory authority for the Challenge Program of the National Endowment for the Arts [20 U.S.C. 954(1)]. In creating the Challenge Program, Congress recognized the necessity of broadening the range and enlarging the number of sources of financial support for arts institutions as well as increasing the levels of support, thus creating a more effective private-public sector partnership. The Challenge Program encourages grantees to improve and integrate their program, audience, and financial development planning to build new and continuing sources of support and a more stable pattern of future operations and growth. In meeting its statutory mandate, the Challenge Program is unique in every phase of the grant process—the application, the grant purposes, the allowable use of grant funds, and the reporting requirements.

For the reason stated above, §____.10, "Forms for applying for grants," §____.22, "Allowable costs," and §____.41, "Financial reporting," of the OMB common regulation are not applicable to grant funds awarded pursuant to subsection 5(1) of the NFAH Act [20 U.S.C. 954(1)], Challenge grants. Congress intended Challenge grants to assist arts organizations in obtaining nonfederal support and to improve their financial stability through long-range financial and program planning. Challenge grant applicants must supply specifically tailored financial and programmatic data to the agency to allow the agency to review applications in a manner consistent with the statutory purpose of the program. Grantees under the Challenge Program are permitted to expend funds for purposes that in some instances would not be consistent with applicable cost principles. Finally, grantees must maintain and report financial data beyond that required by standard forms to demonstrate achievement of matching and other programs requirements.

Request for Comments

Section ____.10 of the OMB common regulation prescribes use by state and local governmental applicants of common application forms for all federal grant programs covered by the regulation, with the exception of formula grant programs. As explained elsewhere in this preamble, the Arts Endowment has determined that its primary program of assistance to the states, the basic state operating grant program, is a formula grant program and exempt from this requirement. However, state and local governments are eligible recipients under other Arts Endowment programs and would be affected by this requirement. Given the orientation of these programs, state and local governments usually constitute only a small percentage of applicants and recipients. (The programs directed toward support of local arts agencies and arts in education are obvious exceptions to this.) Currently, each of those programs requires use of a specific Arts Endowment application form, approved by OMB, which provides information needed by Arts Endowment panels to evaluate the applications. The Arts Endowment requests comment from the public as to the impact which use of the common application form, with the Arts Endowment's existing application forms as supplements, would have for state and local government applicants.

List of Subjects in 45 CFR Part 1157

Accounting, Administrative practice and procedure, Grant programs—state and local government recipients, Grants Administration, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 1157 as set forth at the end of this document.

F.S.M. Hodsoll,

Chairman, National Endowment for the Arts.

PART 1157—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.
1157.1 Purpose and scope of this part.
1157.2 Scope of subpart.
1157.3 Definitions.
1157.4 Applicability.
1157.5 Effect on other issuances.
1157.6 Exceptions.

Subpart B—Pre-Award Requirements

1157.10 Forms for applying for grants.
1157.11 State plans.
1157.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1157.20 Standards for financial management systems.
1157.21 Payment requirements.
1157.22 Allowable costs.
1157.23 Period of availability of funds.
1157.24 Matching or cost sharing.
1157.25 Program income.
1157.26 Non-Federal audit.

Changes, Property and Subawards

1157.30 Changes under discretionary (project) awards.
1157.31 Real Property.
1157.32 Equipment.
1157.33 Supplies.
1157.34 Copyrights.
1157.35 Subawards to debarred and suspended parties.
1157.36 Procurement.

Reports, Records Retention, and Enforcement

1157.40 Monitoring and reporting program performance.
1157.41 Financial reporting.
1157.42 Retention and access requirements for records.
1157.43 Enforcement.
1157.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1157.50 Closeout.
1157.51 Later disallowances and adjustments.
1157.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 959(a)(1).

NATIONAL ENDOWMENT FOR THE HUMANITIES

45 CFR Part 1174

ADDRESS: Comments should be sent to: Stephen J. McCleary, Deputy General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0322.

FOR FURTHER INFORMATION CONTACT: David Wallace, Grants Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0494.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Legislative Override

1. Section ____.4 makes the common regulation applicable to all grant programs except where the regulation is inconsistent with federal statutes or regulations. The common regulation has been determined to be inconsistent with the challenge grant program of the National Endowment for the Humanities [20 U.S.C. 956(h)]. In creating challenge grants as a unique program of grants, Congress recognized the necessity of broadening the range and enlarging the number of sources of financial support for cultural institutions as well as increasing the levels of support, thus creating a more effective private-public sector partnership. The challenge grant program encourages grantees to improve and integrate their program, audience, and financial development planning to build new and continuing sources of support and a more stable pattern of future operations and growth. Thus the challenge grant program in meeting its mandate is unique in every phase of the grant process—the application, the grant purposes, the allowable use of grant funds, and the reporting requirements.

For the reasons stated above, §____.22, "Allowable Costs," of the OMB common regulation is applicable to grant funds except challenge grant funds awarded pursuant to subsection 7(h) of the National Foundation of the Arts and the Humanities Act of 1965, as amended (hereinafter "NFAH Act"), [20 U.S.C. 956(h)] unless otherwise provided in the grant agreement. Congress intended challenge grants to assist humanities organizations in obtaining nonfederal support and to improve their financial stability through long-range financial and program planning. Since the passage of the challenge grant portion of the Endowment's statute, the Endowment has consistently taken the position that grantees under the challenge grant program are permitted to expend funds for purposes of endowment, fundraising, and other uses which would not be sanctioned by applicable cost principles.

2. Potentially §____.11, "State Plans," of the Office of Management and Budget (OMB) common regulation may become inapplicable. Section ____.11 allows states to "simplify, consolidate, and substitute plans" required to be submitted to federal agencies in order to receive federal assistance. However, subsection 7(f) of the NFAH Act, [20 U.S.C. 956(f)], provides that a state applicant may apply for grant assistance, or in the absence of a state application, an appropriate entity within the state may apply for funding, but in either case applicants are required to submit a specific, statutorily described, state plan in order to receive basic grant assistance. Although thus far no state has applied under this provision, were a state to apply, because the Humanities Endowment's authorizing legislation specifies certain information and assurances that must be included in the state plan, it would not be legally permissible for a state to substitute a different state plan for this purpose, or to simplify the state plan requirements. Given timing requirements, it would be impracticable to consolidate these plans with other state plans. In the event a state chose to apply for a grant under the provisions under 20 U.S.C. 956(f), the Humanities Endowment would consider that application to be a "formula grant program" not subject to the application forms provision of section ____.10 of the OMB model for these grants.

3. Sections ____.40(e) and ____.41(a)(7) of the OMB common regulation allow grantor agencies to waive any performance or financial reports required by the regulations. This waiver authority is inconsistent with the provisions of subsections 10(d)(1) and 10(d)(2)(A) of the Humanities Endowment's authorizing legislation [20 U.S.C. 959(d)]. Section 10(d)(1) provides: "* * * the Chairperson of the National Endowment for the Humanities *shall conduct* a post-award evaluation of projects, productions, and programs, for which financial assistance is provided" under section 7(c). (Emphasis supplied.) Subsection 10(d)(2)(A) requires that:

> The recipient of financial assistance provided by either of the endowments *shall submit* to the Chairperson of the Endowment involved—
>
> (i) a financial report containing such information as the Chairperson deems necessary to ensure that such financial assistance is expended in accordance with the terms and conditions under which it is provided;
>
> (ii) a report describing the project, production, or program carried out with such financial assistance; and
>
> (iii) if practicable, as determined by the Chairperson, a copy of such project, production, or program. (Emphasis supplied.)

Because of the statutory requirement, the Humanities Endowment is unable to excuse the various provisions of the common regulations regarding the performance and financial reports.

Additional Comments

Section ____.10(b) of the OMB common regulation limits the number of copies of an application (an original and two copies) that may be required of state and local governmental applicants and §____.10(d) prescribes the use of a common application form for all federal nonconstruction programs covered by the regulations, with the exception of formula grant programs. Although the Endowment does not have programs that are specifically designed to provide grant assistance to state and local governments and is not subject to the requirements of Executive Order 12372, units of state and local governments are eligible to apply to the majority of the Endowment's discretionary grant programs and would be affected by these requirements. Given the orientation of these programs, state and local governments usually constitute only a small percentage of applicants and recipients of grant funds under these programs. Currently, each of these programs requires use of a Humanities Endowment standard application cover sheet, approved by OMB, which provides information needed by the Humanities Endowment, its panels, its reviewers, and its National Council to evaluate applications which are in competition with one another and which meets the reporting requirements of the Federal Assistance Award Data System.

To be able to insure that applications receive a thorough and objective review in the Endowment's comprehensive peer review process, the Endowment has traditionally requested applicants to submit multiple copies of an application. A distinction should be made between the discretionary grant programs the Endowment administers as opposed to entitlement grant programs where an applicant must meet certain statutory minimum requirements to be entitled to receive allocated grant funds. Once any applicant voluntarily elects to apply to the Endowment for discretionary public funds, the applicant should properly bear the costs of applying, not the American taxpayer. Also, if units of state and local governments are required to submit no more than an original and two copies of an application, there is concern that, because these applications will have to receive separate and different treatment, this may in some way work to the detriment of this category of applicants because of delays caused by additional processing required for these applications.

List of Subjects in 45 CFR Part 1174

Accounting, Administrative practice and procedure, Grant programs—state and local government recipients, Grants administration, Reporting and recordkeeping requirements.

It is proposed at Title 45 of the CFR be amended by adding Part 1174 as set forth at the end of this document.

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

PART 1174—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

1174.1 Purpose and scope of this part.
1174.2 Scope of subpart.
1174.3 Definitions.
1174.4 Applicability.
1174.5 Effect on other issuances.
1174.6 Exceptions.

Subpart B—Pre-Award Requirements

1174.10 Forms for applying for grants.
1174.11 State plans.
1174.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1174.20 Standards for financial management systems.
1174.21 Payment requirements.
1174.22 Allowable costs.
1174.23 Period of availability of funds.
1174.24 Matching or cost sharing.
1174.25 Program income.
1174.26 Non-Federal audit.

Changes, Property and Subawards

1174.30 Changes under discretionary (project) awards.
1174.31 Real Property.
1174.32 Equipment.
1174.33 Supplies.
1174.34 Copyrights.
1174.35 Subawards to debarred and suspended parties.
1174.36 Procurement.

Reports, Records Rentention, and Enforcement

1174.40 Monitoring and reporting program performance.
1174.41 Financial reporting.
1174.42 Rentention and access requirements for records.
1174.43 Enforcement.
1174.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1174.50 Closeout.
1174.51 Late disallowances and adjustments.
1174.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 959(a)(1).

Institute of Museum Services

45 CFR Part 1183

ADDRESS: Comments should be sent to: Lois Burke Shepard, Institute of Museum Services, Rm 510, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Ruth Weant, (202) 786–0539.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Institute of Museum Services is proposing the inclusion in its regulations of a new part that would incorporate the revised OMB Circular A–102 containing government-wide application and other requirements applicable to grants to State, local, and federally-recognized Indian tribal governments. Part 1183 of Title 45 of the Code of Federal Regulations. The new part would incorporate the revised OMB Circular A–102 containing government-wide application and other requirements applicable to grants to State, local, and federally-recognized Indian tribal governments. Part 1183 would apply generally to applications by those applicants to the Institute of Museum Services for grants under general operating support and conservation project support programs.

The regulations in Part 1183 reflect a government-wide study of the provisions of Circular A–102 designed to simplify its provisions and reduce grantee burden. The study was conducted by an interagency task force under the President's Council on Management Improvement.

For the most part, these regulations should involve little change in the administration of IMS programs. The present regulations indicate the applicability of A–102 principles to record keeping requirements and fiscal control and fund accounting procedures. However, inclusion of the text of the Circular in comprehensive regulations may result in greater focus on those provisions in the administration and monitoring of IMS grants. Moreover, in a few areas, significant change may be encountered and comments are invited on them.

Comment is particularly invited on proposed regulations which call for the submission of applications covered by OMB Circular A–102 on the government-wide standard request for federal assistance rather than the application face sheet presently used by IMS. This change might result in the submission of different application forms by applicant

museums which are units of State, local, and federally-recognized Indian tribal governments. Copies of the current government-wide standard request for federal assistance as well as the current IMS application face sheet are available to commenters from IMS.

List of Subjects in 45 CFR Part 1183

Accounting, Administrative practice and procedure, Grant programs—Museum, national boards, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 1183 as set forth at the end of this document.

Lois Burke Shepard,

Director.

PART 1183—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

1183.1 Purpose and scope of this part.
1183.2 Scope of subpart.
1183.3 Definitions.
1183.4 Applicability.
1183.5 Effect on other issuances.
1183.6 Exceptions.

Subpart B—Pre-Award Requirements

1183.10 Forms for applying for grants.
1183.11
1183.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

1183.20 Standards for financial management systems.
1183.21 Payment requirements.
1183.22 Allowable costs.
1183.23 Period of availability of funds.
1103.24 Matching or cost sharing.
1183.25 Program income.
1183.26 Non-Federal audit.

Changes, Property, and Subawards

1183.30 Changes under discretionary (project) awards.
1183.31 Real property.
1183.32 Equipment.
1183.33 Supplies.
1183.34 Copyrights.
1183.35 Subawards to debarred and suspended parties.
1183.36 Procurement.

Reports, Records Retention, and Enforcement

1183.40 Monitoring and reporting program performance.
1183.41 Financial reporting.
1183.42 Retention and access requirements for records.
1183.43 Enforcement.
1183.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1183.50 Closeout.
1183.51 Later disallowances and adjustments.
1183.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 961068.

ACTION

45 CFR Part 1234

ADDRESS: Comments should be sent to: Kirby L. McCollum, Chief, Grants Management Branch, ACTION, 806 Connecticut Avenue, NW., Room P–403, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Kirby L. McCollum, (202) 634–9150.

List of Subjects in 45 CFR Part 1234

Accounting, Administrative practice and procedure, Grant programs—Volunteer services, Grants administration, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 1234 as set forth at the end of this document.

Alex Becerra,

Acting Executive Officer, Office of Management and Budget.

PART 1234—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

1234.1 Purpose and scope of this part.
1234.2 Scope of subpart.
1234.3 Definitions.
1234.4 Applicability.
1234.5 Effect on other issuances.
1234.6 Exceptions.

Subpart B—Pre-Award Requirements

1234.10 Forms for applying for grants.
1234.11 State plans.
1234.12 Special grant or subgrant conditions for "high-risk grantees.

Subpart C—Post-Award Requirements

Financial Administration

1234.20 Standards for financial management systems.
1234.21 Payment requirements.
1234.22 Allowable costs.
1234.23 Period of availability of funds.
1234.24 Matching or cost sharing.
1234.25 Program income.
1234.26 Non-Federal audit.

Changes, Property, and Subawards

1234.30 Changes under discretionary (project) awards.
1234.31 Real property.
1234.32 Equipment.
1234.33 Supplies.
1234.34 Copyrights.
1234.35 Subawards to debarred and suspended parties.
1234.36 Procurement.

Reports, Records Retention, and Enforcement

1234.40 Monitoring and reporting program performance.
1234.41 Financial reporting.
1234.42 Retention and access requirements for records.
1234.43 Enforcement.
1234.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

1234.50 Closeout.
1234.51 Later disallowances and adjustments.
1234.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Pub. L. 93–113; 42 U.S.C. 4951, *et seq.*; 42 U.S.C. 5060.

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2015

ADDRESS: Comments should be sent to: Commission on the Bicentennial of the United States Constitution, Office of the General Counsel, 736 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Joseph B. McGrath, General Counsel, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place NW., Washington, DC 20503 (202) 275–9178.

List of Subjects in 45 CFR Part 2015

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding a new Part 2015 as set forth at the end of this document.

Mark W. Cannon,

Staff Director.

PART 2015—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

2015.01 Purpose and scope of this part.
2015.02 Scope of subpart.
2015.03 Definitions.
2015.04 Applicability.
2015.05 Effect on other issuances.
2015.06 Exceptions.

Subpart B—Pre-Award Requirements

2015.10 Forms for applying for grants.
2015.11 State plans.
2015.12 Special grant or subgrant conditions for "high-risk" recipients.

Subpart C—Post-Award Requirements

Financial Administration

2015.20 Standards for financial management systems.
2015.21 Payment requirements.
2015.22 Allowable costs.
2015.23 Period of availability of funds.
2015.24 Matching or cost sharing.
2015.25 Program income.
2015.26 Non-Federal audit.

Changes, Property, and Subawards

2015.30 Changes under discretionary (project awards).
2015.31 Real property.
2015.32 Equipment.
2015.33 Supplies.
2015.34 Copyrights.
2015.35 Subawards to debarred and suspended parties.
2015.36 Procurement.

Reports, Records Retention, and Enforcement

2015.40 Monitoring and reporting program performance.
2015.41 Financial reporting.
2015.42 Retention and access requirements for records.
2015.43 Enforcement.
2015.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

2015.50 Closeout.
2015.51 Later disallowances and adjustments.
2015.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Pub. L. 98–101 as amended and Pub. L. 99–194.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. 44910; Notice No. 87–10]

49 CFR Part 18

ADDRESS: Interested persons should submit comments to Docket Clerk, OST Docket No. 44910, Department of Transportation, 400 Seventh Street, SW., Room 10421, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura, Department of Transportation, Office of Acquisition and Grant Management—M–63, 400 Seventh Street, SW., Room 9100, Washington, DC 20590, (202) 366–4286.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Background

Most significant changes are noted in the common preamble. Also to be noted, is the Federalism provision of the common rule that would allow States to use their own laws and procedures for equipment acquired with Federal grant funds. This provision could result in a State retaining the sales proceeds of equipment acquired with Federal grant funds if the States procedures do not provide for reimbursement to Federal agencies for their share of equipment that is no longer retained for State use.

Deviations

Because of existing statutes or to reduce Federal red tape the Department proposes to not comply with some of the sections of the common rule. These proposed deviations are listed below. Comments are requested on the proposed deviations that are not required by statute. The deviations not required by statute must be approved by the Office of Management and Budget, and if approved, will be issued as final in the final rule.

Section ____.10, Forms for Applying for Grants. The Federal Highway Administration proposes to require its own application forms and procedures. The use of nonstandard forms is justified because the standard application form required by the common rule would serve no useful purpose in the Federal Highway Administration (FHWA) programs. Funds for these programs, for the most part, are apportioned to the States by statutory formula. The States then initiate the necessary actions to receive those funds. Under highway programs, annual programs of proposed projects are submitted by the State highway/transportation agencies as required by 23 U.S.C. 104(f), 105, and 307(c). FHWA reviews and approves the annual programs which form the basis for all subsequent individual project applications/approvals. Only projects listed in the approved program are eligible for Federal assistance. 23 U.S.C. 106(a) specifies the project application process for the highway program. State highway/transportation agencies are required to submit surveys, plans, specifications, and estimates (PS&E) for each proposed project. FHWA approval of this submission constitutes formal project authorization. Since the States must submit a PS&E package for every project, the submission of an application form with redundant information in each package would only result in additional paperwork.

We estimate that on a nationwide basis, the States would have to submit more than 100 preapplication forms each year, and 5,000 application forms each month. We continue to believe the State and Federal governments would be better served by using FHWA procedures. FHWA was exempted from the requirements of Attachment M, Standard Forms for Applying for Federal Assistance, in 1974.

Section ____.20, Standards for Financial Management Systems. Section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR Part 630, establishes a requirement for a uniform system of accounts and records and a uniform reporting system for certain grantees.

Section ____.21, Payment Requirements. 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

Section ____.22, Allowable Costs. Sections 3(l) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary of Transportation to include in the net project cost the amount of interest earned and payable on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof.

Section ____.22, Allowable Costs. Section 9(j) of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

Subsection ____.22(b), Allowable Costs. 23 U.S.C. 302(a) has been interpreted for more than 60 years to rule out general administrative and overhead costs of State highway agencies as eligible costs for reimbursement. As such, the overhead cost principles of OMB Circular A–87 are not applied to these State agencies.

Section ____.24, Matching. 23 U.S.C. 121(a) permits reimbursement for actual construction cost incurred by States for highway construction projects. Except for private donations of right-of-way, contributions and donations are not considered State costs, and are not allowable for matching purposes for highway construction contracts. 23 U.S.C. 323 permits private donations of right-of-way to be used for a States matching share, and establishes procedures for determining the fair market value of such donated right-of-way.

Section ____.24, Matching. Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under Section 3 of the UMT Act of 1964, as amended, shall be in amount equal to

75 percent of the net project costs. Net project costs is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

Section ____.24, Matching. Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

Section ____.24(c), Valuation of Donated Services. This section allows for the contribution of nongrantee donated services toward the non-Federal share. Section 5g of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the Local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administration costs."

Section ____.25, Program Income. Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the disposition of income derived from appreciated land values. Specific requirements are contained in grant agreements.

Section ____.25, Program Income. The legislative history of section 4(a) of the UMT Act of 1964, as amended, addresses treatment of program income. Except for grants awarded under section 6, section 16(b)(2) or Section 18 of the UMT Act of 1964, as amended, grantees may retain program income for otherwise allowable capital or operating expenses.

Section ____.25, Program Income. Section 9(k) of the UMT Act of 1964, as amended, excludes from program income any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels.

Section ____.25, Program Income. 23 U.S.C. 156 requires that State must charge, as a minimum, fair market value for sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income must be used for projects eligible under 23 U.S.C.

Section ____.31(c), Real Property. 23 U.S.C. 103(e) (5), (6), and (7) provide that States are not required to repay the Highway Trust fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn and the property is used for public transportation, conservation, or recreational purposes.

Section ____.36, Procurement. 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effecive in securing competition." The Secretary proposes to continue using the detailed construction contracting procedures contained in 23 CFR Part 635, Subpart A.

Section ____.36, Procurement. Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

Section ____.36, Procurement. 46 U.S.C. 1241(b)(1) and 46 CFR Part 381 imposes cargo preference requirements on the shipment of foreign made goods.

Section ____.36, Procurement. Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

Section ____.36, Procurement. 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

Section ____.36, Procurement. 23 U.S.C. 112(d) requires concurrence by the Secretary before highway construction contracts can be awarded.

Section ____.36, Procurement. 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions suspension of work, and material changes in the scope of the work for highway construction contracts.

Section ____.36, Procurement. 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

Section ____.36, Procurement. Section 12(b)(4) of the UMT Act of 1964, as amended, and 23 U.S.C. 112(b)(2) extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to other areas and require that such contracts shall be awarded in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State qualifications-based requirements.

Subsection ____.36(c), Competition. Section 105(f) of the Surface Transportation Assistance Act of 1982, Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Part 23 impose requirements for the participation of disadvantaged business enterprises.

Subsection ____.36(d), Methods of Procurement to be Followed. Section 308 of the Surface Transportation Act of 1982, 49 U.S.C. 1608(b)(2), authorzies the use of competitive negotiation for the purchase of rolling stock as appropriate.

Subsection ____.40(c), Construction Performance Reports. Section 12(h) of the UMT Act of 1964, as amended, requires pre-award testing of new buses and other rolling stock.

Section ____.41, Financial Reporting. The Federal Highway Administration proposes to require State recipients to use FHWA or State financial reports as opposed to the standard forms referenced in the common rule. Since the 1960's, FHWA has had direct access to State financial and project data through the use of computerized accounting and billing systems. The State and Federal systems are fully integrated in that the data produced by the State is entered directly into FHWA's accounting system. FHWA's reporting system was officially exempted from the financial reporting requirements of OMB Circular A-102 (Attachment H) in 1975. Requiring the use of the standard forms would:

a. Cause the State highway/transportation agencies and FHWA to make modifications to existing accounting and billing systems to accommodate the standard forms.

b. Increase paperwork and reporting. (We estimate on a nationwide basis the States would have to submit approximately 60,000 project claim forms each month. Using FHWA procedures, the States submit only 200 vouchers each month.)

c. Not be practical for highway programs since the standard forms do not provide for:

(1) More than one appropriation code, or more than one Federal fund participation ratio. (Accordingly, the numerous split-funded projects would require a separate voucher for each of the funds and each participation ratio on each project.)

(2) Separate identification of project costs which are not eligible for Federal participation and not allocable to the State's share, i.e., costs incurred for construction engineering in excess of statutory limitation, costs incurred in excess of project requirements, costs of betterments or in excess of standards, costs incurred prior to authorization and approval, etc.

(3) Any adjustments or changes necessary to be applied by FHWA against the billed amount. (The current system allows for reduction or adjustment of a State's claim for

erroneous costs, deficiencies discovered during review processes, changes in highway system designation, errors, and similar problems.)

We continue to believe the State and Federal governments would be better served by using FHWA forms and procedures.

The above justification includes all FHWA programs even though some of the references may not apply to a specific program, such as the Motor Carrier Safety Grant Program. Since all programs are administered in accordance with the processes described above, it would be appropriate for the waivers to apply to all programs.

Section ____.41, Financial Reporting. The National Highway Traffic Safety Administration (NHTSA) proposes to use existing State forms for financial reporting. NHTSA's financial system allows for utilization of State forms for financial reporting. The requirements of this section would require a major reconstruction of a State's financial management system that would increase the complexity and amount of financial reporting rather than simplifying procedures and paperwork.

This position was supported in 1973 by those Governor's Highway Safety Representatives whom NHTSA consulted in requesting a waiver to Attachment H of OMB Circular A-102. The consensus of eight State program officials was that the States would have to modify their existing systems if the financial reporting requirements set forth in Attachment H were mandated by OMB. The State officials indicated that the standard forms would not simplify their operations but would add more work, because State highway safety offices do not require such detail in support of request for reimbursement.

NHTSA's program level management concept, expressed in the Annual Highway Safety Plan and implemented by each State in fiscal year 1972, resulted in decentralizing the decisionmaking to the States in dealing with sub-grantees. This action significantly reduced the flow of paper from the States, both as to applications and reimbursement requests. NHTSA deals directly with each State as a single grantee, relying on the State's internal mechanisms to carry out the details of administration. Under the Highway Safety Plan, States submit a single document for approval, which consists of program areas. Within each of these areas, a description of the proposed projects is given, or a description of the criteria for project selection. Program funds are then obligated on the program area basis and the liquidation of obligations (payment of claims) must be consistent for accounting and reporting purposes. Changing the method of payment would result in reducing the level of management to the project level.

Impact Analyses

Executive Order 12291 and DOT Regulatory Policies and Procedures

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects.

We intend the proposed regulations to result in savings to State and local governments in the costs of administering grants. However, we do not believe that the regulations will have an annual economic effect of $100 million or more or the other effects listed in the Order. For this reason, we have determined that these regulations are not a major rule within the meaning of the Order.

This common rule restates, in regulatory form, most of the provisions of OMB Circular A-102 that had been implemented in our program regulations and directives. In addition, some of provisions of the regulation that were not in Circular A-102, or are different from Circular A-102, will reduce the red tape burden on our grantee. Because of this, we certify that this regulation is nonsignificant under the Department of Transportation's Regulatory Policies and Procedures.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

The recordkeeping and information collection requirements included in these regulations have been submitted or are simultaneously being submitted for approval to OMB.

List of Subjects in 49 CFR Part 18

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

It is proposed to amend Title 49 of the Code of Federal Regulations as set forth below.

Issued this 3rd day of June 1987 at Washington, D.C.

Elizabeth Hanford Dole,

Secretary of Transportation.

1. Part 18 is added as set forth at the end of this document.

PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

18.1 Purpose and scope of this part.
18.2 Scope of subpart.
18.3 Definitions.
18.4 Applicability.
18.5 Effect on other issuances.
18.6 Exceptions.

Subpart B—Pre-Award Requirements

18.10 Forms for applying for grants.
18.11 State plans.
18.12 Special grant or subgrant conditions for "high-risk" recipients.

Subpart C—Post-Award Requirements

Financial Administration

18.20 Standards for financial management systems.
18.21 Payment requirements.
18.22 Allowable costs.
18.23 Period of availability of funds.
18.24 Matching or cost sharing.
18.25 Program income.
18.26 Non-Federal audit.

Changes, Property, and Subawards

18.30 Changes under discretionary awards.
18.31 Real property.
18.32 Equipment.
18.33 Supplies.
18.34 Copyrights.
18.35 Subawards to debarred and suspended parties.
18.36 Procurement.

Reports, Records Retention, and Enforcement

18.40 Monitoring and reporting program performance.
18.41 Financial reporting.
18.42 Retention and access requirements for records.
18.43 Enforcement.
18.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

18.50 Closeout.
18.51 Later disallowances and adjustments.
18.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 49 U.S.C. 322(a).

2. New Part 18 is further amended as follows:

a. Section 18.10 is amended by adding paragraph (a)(3) to read as follows:

§ 18.10 Forms for applying for grants.

(a) * * *

(3) This section shall not apply to awards by the Federal Highway Administration (FHWA). Procedures for FHWA projects are contained in 23 CFR 630, Subpart B, and 23 CFR 420, Subpart A.

* * * * *

b. Section 18.20 is amended by adding paragraph (d) to read as follows:

§ 18.20 Standards for financial management systems.

* * * * *

(d) Certain UMTA grantees shall comply with the requirements of Section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR Part 630, regarding a uniform system of accounts and records and a uniform reporting system for certain grantees.

c. Section 18.21 is amended by adding a sentence to the end of the paragraph to read as follows:

§ 18.21 Payment requirements.

* * * 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

d. Section 18.22 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 18.22 Allowable costs.

* * * * *

(c) The overhead cost principles of OMB Circular A-87 shall not apply to State highway agencies for FHWA funded grants.

(d) Sections 3(l) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary to include in the net project cost, the amount of interest earned and payable on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof.

(e) Section 9 of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

e. Section 18.24 is amended by adding paragraphs (b) (8), (9), and (10) and (c)(3) to read as follows:

§ 18.24 Matching or cost sharing.

* * * * *

(b) * * *

(8) 23 U.S.C. 121(a) permits reimbursement for actual construction cost incurred by States for highway construction projects. Except for private donations of right-of-way, contributions and donations shall not be considered State costs, and shall not be allowable for matching purposes for highway construction contracts. 23 U.S.C. 323 permits private donations of right-of-way to be used for a States matching share, and established procedures for determining the fair market value of such donated right-of-way.

(9) Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under section 3 of the UMT Act of 1964, as amended, shall be in amount equal to 75 percent of the net project costs. Net project cost is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

(10) Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

(c) * * *

(3) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the Local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administrative costs."

* * * * *

f. Section 18.25 is amended by adding paragraph (g)(4), (5), (6), and (7) to read as follows:

§ 18.25 Program income.

* * * * *

(g) * * *

(4) Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the use of income derived from appreciated land values for certain UMTA grants. Specific requirements shall be contained in grant agreements.

(5) Except for grants awarded under section 6, section 16(b)(2) or Section 18 of the UMT Act of 1964, as amended, UMTA grantees may retain program income for otherwise allowable capital or operating expenses.

(6) For grants awarded under section 9 of the UMT Act of 1964, as amended, any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels shall be excluded from program income.

(7) 23 U.S.C. 156 requires that States shall charge fair market value for the sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income shall be used for projects eligible under 23 U.S.C.

* * * * *

g. Section 18.31 is amended by adding paragraph (d) to read as follows:

§ 18.31 Real property.

* * * * *

(d) If approved, States shall not be required to repay the Highway Trust fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn and the property is used for public transportation, conservation, or recreational purposes.

h. Section 18.36 is amended by adding paragraphs (j) through (t) to read as follows:

§ 18.36 Procurement.

* * * * *

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(l) and 46 CFR Part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

(n) Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Act of 1982, 49 U.S.C. 1608(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding

requirements for highway construction contracts in emergency situations.

(q) 23 U.S.C. 112(d) requires concurrence by the Secretary before highway construction contracts can be awarded.

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension of work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA) grantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to other areas and to award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State qualifications-based requirements.

i. Section 18.40(c) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 18.40 Monitoring and reporting program performance.

* * * * *

(c) * * * Section 12h of the UMT Act of 1964, as amended, requires pre-award testing of new buses and other rolling stock.

* * * * *

j. Section 18.41 is amended by adding paragraph (f) to read as follows:

§ 18.41 Financial reporting.

* * * * *

(f) Notwithstanding the provisions of paragraph (a)(1), recipients of FHWA and National Highway Traffic Safety Administration (NHTSA) grants shall use FHWA, NHTSA or State financial reports.

PART ____.— UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS (COMMON REGULATION)

Subpart A—General

Sec.

____.1 Purpose and scope of this part.
____.2 Scope of subpart.
____.3 Definitions.
____.4 Applicability.
____.5 Effect on other issuances.
____.6 Exceptions.

Subpart B—Pre-Award Requirements

____.10 Forms for applying for grants.
____.11 State plans.
____.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

____.20 Standards for financial management systems.
____.21 Payment requirements.
____.22 Allowable costs.
____.23 Period of availability of funds.
____.24 Matching or cost sharing.
____.25 Program income.
____.26 Non-Federal audit.

Changes, Property, and Subawards

____.30 Changes under discretionary (project) awards.
____.31 Real property.
____.32 Equipment.
____.33 Supplies.
____.34 Copyrights.
____.35 Subawards to debarred and suspended parties.
____.36 Procurement.

Reports, Records Retention, and Enforcement

____.40 Monitoring and reporting program performance.
____.41 Financial reporting.
____.42 Retention and access requirements for records.
____.43 Enforcement.
____.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

____.50 Closeout.
____.51 Later disallowances and adjustments.
____.52 Collection of amounts due.

Subpart E—Entitlements (Reserved)

Subpart A—General

§ ____.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ ____.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ ____.3 Definitions.

As used in this part:

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means (1) with respect to a grant, the granting agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the recipient by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as recipient cash contributions.

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement subcontract under a contract.

"Cost sharing or matching" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one

year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"Government" means a State of local government or a federally recognized Indian tribal government.

"Grant" means an awards of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The terms does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of government (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"Obligations" mean the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"OMB" means the United States Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the net increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Prior approval" means documentation evidencing prior consent.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Share", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all tangible personal property other than "equipment" as defined in this part.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee. "Termination"does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"Terms of a grant or subgrant" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"Third party in-kind contributions" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the recipient, or a cost-type contractor under the grant agreement.

"Unliquidated obligations" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ ___.4 Applicability.

(a) *General.* Except where inconsistent with Federal statutes or regulations, Subparts A–D of this part apply to all grants and subgrants to governments, except:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982.

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act);

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits; and

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children).

(b) *Entitlement programs.* Entitlement programs enumerated above in § ___.4(a)(3)–(8) are subject to subpart E.

§ ___.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § ___.6.

§ ___.6 Exceptions.

(a) Federal agencies may not impose additional administrative requirements with respect to grants subject to this part except in codified regulations published in the **Federal Register.**

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ ___.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants will use only the forms specified in paragraphs (c)-(e) of this section, and such supplementary or other forms as may from time to time be prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable standard instructions promulgated by OMB for use in connection with the forms and supplementary Federal agency instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB under the Paperwork Reduction Act of 1980. For any standard form, except the SF 424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the SF 424 facesheet and any other affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

(c) *Preapplications for Federal Assistance.* Applicants must submit the Preapplication form for all construction, land acquisition and land development projects or programs for which the need for Federal funding exceeds $100,000 unless the Federal agency determines that a preapplication is not needed. The Federal grantor agency may require the use of the preapplication form for other types of grant programs or for those for which the Federal fund request is for $100,000 or less.

(d) *Application for Federal Assistance (Nonconstruction programs).* Applicants must submit the Application for Federal Assistance (Nonconstruction programs) form in applying for any grant to which this part is applicable except where a form specified in paragraph (e) of this section is to be used.

(e) *Application for Federal Assistance (Construction programs).* Applicants must submit the Application for Federal

Assistance (for Construction programs) form in applying for any grant whose purpose is solely or primarily construction, land acquisition, or land development.

§ ___.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ ___.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) An grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions which correspond to the high risk determination may be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding officials will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

Financial Administration

§ ___.20 Standards for financial management systems.

(a) A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures must be sufficient to—

(1) Permit preparation of reports required by this regulation and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable costs.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by a letter-of-credit method, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ ___.21 Payment requirements.

Methods and procedures for payment must minimize the time elapsing

between the transfer of funds and the grantee's disbursements in accordance with Treasury regulations at 31 CFR Part 205.

§ ___.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the recipient or subrecipient.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OMB Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ ___.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs of the funding period (usually 12 months long) for which the funds are awarded, unless carryover is permitted, in which case the costs would be charged to the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The awarding agency may extend this deadline at the request of the grantee.

§ ___.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § ___.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § ___.25(g).

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Cost sharing or matching credit for such contributions shall be given only if the grantee or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is of a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's organization. If the grantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same

labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee or cost-type contractor furnishes free of charge the services of an employee in the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section will apply.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following rules apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the awarding agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § ____.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee donated real property for construction/acquisition.* If a grantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the awarding agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ ____.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal awarding agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, the grantee may deduct the incidental cost of generating income from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § ____.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ ____.31 and ____.32.

(g) *Use of program income.* Grantees will deduct program income from outlays which may be both Federal and non-federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily the grantee will deduct program income from total allowable costs to determine the net allowable costs. The grantee will use program income for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, the grantee may add program income to the funds committed to the grant agreement by the Federal agency and the grantee. The grantee will use the program income for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, the grantee may use program income to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ ____.26 Non-Federal audit.

Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984.

Changes, Property, and Subawards

§ ____.30 Changes under discretionary (project) awards.

(a) *General.* (1) Paragraphs (c) through (f) of this section do not apply to programmatic changes or budget revisions made by grantees under State Plan or other formula grants which the awarding agency is required by law to award if the applicant meets all applicable requirements.

(2) Under a discretionary project awards, grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § ____.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees must obtain the prior written approval of the awarding party whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding party's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding party before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior written approval of the awarding party whenever any of the following actions is anticipated:

(1) Any revision of the scope or objective of the project (regardlesss of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award.

(4) Under nonconstruction projects, contracting out or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § ____.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* (1) The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(2) The awarding agency may not require prior written approval for grant administration project revisions other than those described in paragraph (d) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § ____.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the grant award. If the revision requested by the subgrantee would result in a change to the grantee's approved project which requires agency prior approval, the grantee will obtain the awarding agency approval before approving such revision.

§ ____.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding party. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer of title to the awarding agency or to a third-party designated/approved by the awarding agency in which case the grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the cost of the original cost to the current fair market value of the property.

§ ____.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired

under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment will be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds.

(2) The grantee or subgrantee will also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired.

(3) Notwithstanding the encouragement in ____.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed in projects or programs currently or previously supported by the awarding agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may unilaterally make excess and disposition decisions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

§ ____.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ ____.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ ____.35 Subawards to debarred and suspended parties.

(a) Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executrive Order 12549, "Debarment and Suspension." Grantees shall consult and require their subgrantees and contractors at any tier when charged as direct costs, to consult the Consolidated List of Debarred, Suspended and Ineligible Assistance Participants to assure that they do not award grant funds to listed parties in violation of the Executive order. Access to the Consolidated List shall be provided to grantees, subgrantees and contractors through the Federal awarding agency. Grantees will direct any questions regarding the use of the list to the Federal awarding agency.

(b) If a grantee believes that there are compelling reasons for making an award to a debarred, suspended or voluntarily excluded person in a particular case, the grantee may apply to the Federal awarding agency for a waiver from this requirement, pursuant to E.O. 12549. Such waivers will be granted only in unusual circumstances upon the written determination, by an authorized Federal agency official, of the compelling reasons justifying the participation.

§ ____.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (h) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and

specifications of their contracts or purchase orders.

(3) Grantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee before pursuing a protest with the Federal awarding agency. Reviews of protests by the awarding agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's protest procedures or failure to review a complaint or protest.

Protests received by the awarding agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § ____.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest, and

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement,

(vii) Any arbitrary action in the procurement process.

(2) Grantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the

named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising) is publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive negotiations; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (vi) of this section.

(f) *Contract cost and price.* (1) Grantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price

competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §____.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees must on request make available for awarding agency pre-award review, procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the Federal agency determines that its procurement systems comply with the standards of this section.

(i) A grantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee that it is complying with these standards. A grantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For those contracts or subcontracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's contracts must contain the following contract provisions:

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)

(2) Termination for cause and for convenience by the grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

Reports, Records Retention, and Enforcement

§ ____.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The awarding agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the awarding agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees will submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will never be more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the awarding agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the awarding agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by awarding agencies to monitor progress under construction grants and subgrants. The awarding agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the awarding agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) *Waivers, extensions.* (1) Awarding agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the awarding agency.

§ ____.41 Financial Reporting.

(a) *General.* (1) Except as provided in paragraphs (a)(2), (5) and (6) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to awarding agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees are encouraged not to impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB for use in connection with the forms specified in paragraphs (b) through (e) of this section. Awarding agencies may issue substantive supplementary instructions only with the approval of OMB. Awarding agencies may shade out or instruct the grantee to disregard any line item that the awarding agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Awarding agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Awarding agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) When an awarding agency has determined that a grantee's accounting system does not meet the standards for financial management systems contained in § ____.20 of this part, it may require financial reports with more frequency or more detail (or both), upon written notice to the grantee, until such time as the standards are met.

(7) Awarding agencies may waive any report required by this section if not needed.

(8) Awarding agencies may extend the due date for any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.*—(1) *Form.* Grantees will use Standard Form

269, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § ____.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it uses in its own accounting system.

(3) *Frequency.* The awarding agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the awarding agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letters of credit (or Treasury check advances), the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the awarding agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the awarding agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the awarding agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*— (1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § ____.41(b).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Awarding agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § ____.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § ____.41(b).

(2) Grants that support construction activities paid by letter of credit or Treasury check advance.

(i) When a construction grant is paid by letter of credit or Treasury check advances, the grantee will report its outlays to the awarding agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The awarding agency will provide any necessary special instruction. However, frequency and due date shall be governed by § ____.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § ____.41(d).

(iii) The awarding agency may substitute the Financial Status Report specified in § ____.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § ____.41(b)(2).

§ ____.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see Required Contract Provisions, § ____.36(i) (8).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding parties may make special arrangements with grantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding agency, the 3-year retention requirement is not applicable to the grantee.

(c) *Starting date of retention period*— (1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention

period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to any books, documents, papers, or other records which are pertinent to the grant, in order to make audit, examination, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) shall not apply to records owned and possessed by the grantee. Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ ____.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Suspend or terminate the current award for the grantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a grantee resulting from obligations incurred by the grantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantees from being subject to "Debarment and Suspension" under E.O. 12549 (see § ____.35).

§ ____.44 Termination for convenience.

Except as provided in § ____.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § ____.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ ____.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable.*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § ____.32(f), a grantee must submit an inventory of all federally owned property for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal awarding agency will, within 60 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal awarding agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal awarding agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ ____.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The awarding agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § ____.42;

(d) Property management requirements in §§ ____.31 and ____.32; and

(e) Audit requirements in § ____.26.

§ ____.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlements [Reserved]

[FR Doc. 87-13013 Filed 6-8-87; 8:45 am]

BILLING CODES 3410-KS, 6450-01, 8025-01, 3510-FE, 4710-24, 4210-32, 4410-18, 4510-23, 6732-01, 3810-01, 4000-01, 7515-01, 8320-01, 6560-50, 4310-RF, 6718-01, 4150-04, 7537-01, 7536-01, 7536-01, 6050-28, 6340-01, 4910-62

federal register

Tuesday
June 9, 1987

Part V

Department of Education

34 CFR Part 74

Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 74

Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend 34 CFR Part 74 of the Education Department General Administrative Regulations (EDGAR) to limit the applicability of that Part to Institutions of higher education, hospitals, and other nonprofit organizations. Part 74 establishes grant management requirements and currently applies to institutions of higher education, hospitals, and other nonprofit organizations under Office of Management and Budget (OMB) Circular A–110 and to State and local governments and Indian tribal organizations under OMB Circular A–102. This amendment is necessary because, in a separate document published in this issue of the **Federal Register**, the Secretary proposes to establish a new Part 80 to implement proposed revisions to OMB Circular A–102, which applies only to State and local governments and Indian tribal organizations.

DATE: Comments must be received on or before August 10, 1987.

ADDRESS: Comments should be sent to Hazel Fiers, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3021, Federal Office Building No. 6), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Hazel Fiers, Telephone (202) 472–5123.

SUPPLEMENTARY INFORMATION: In a separate document published in this issue of the **Federal Register**, the Secretary has joined with the heads of 22 other Federal agencies to promulgate proposed common regulations to implement revisions to OMB Circular A–102. In that document the Secretary proposes to implement the common regulations in a new Part 80. The Director of OMB also publishes in this issue of the **Federal Register** a notice containing the proposed revisions to the Circular upon which the common regulations are based.

The Department of Education is one of six agencies that uses department-wide regulations to implement the current circulars A–102 and A–110. The Secretary now proposes in a separate document to implement Circular A–102 in a new Part 80. The Secretary, therefore, proposes in this document to limit the applicability of Part 74 to those institutions covered only by OMB Circular A–110—institutions of higher education, hospitals, and other nonprofit organizations.

For a discussion of the background of the common regulations and a statement about the general issues raised by the common regulations see the general preamble to the proposed rulemaking document for the common regulations. As discussed earlier, that document is published elsewhere in this issue of the **Federal Register**. The Secretary has also included in that document an ED-specific preamble discussing certain issues raised by the Department's implementation of the proposed common regulations. Please see that other rulemaking document for the agency-specific preamble as well as the general preamble. The remainder of this preamble discusses the specific changes necessary to Part 74 in order to limit its applicability to institutions subject to Circular A–110—institutions of higher education, hospitals, and other nonprofit organizations.

A majority of programs administered by the Secretary that apply to institutions of higher education, hospitals, or other nonprofit organizations are direct grant programs. The Secretary does not permit subgrants under direct grant programs (34 CFR 75.708(a)). Thus, the Secretary proposes to remove the provisions in Part 74 that tell a grantee what is permissible for inclusion in a subgrant issued by the grantee. However, institutions of higher education and other nonprofit organizations are eligible to receive subgrants under Title III, Part A, of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2351, 2352), which has, for the first time since its authorization, received an appropriation for the current fiscal year. The Secretary expects Congress to continue funding this program in the future. Thus, those provisions of Part 74 that apply directly to subgrantees have not been proposed for removal by the Secretary.

The Secretary proposes to remove Appendix C from Part 74. Appendix C establishes cost principles for State and local governments and Indian tribal organizations. The proposed new Part 80 would require these entities to comply with the cost principles in OMB Circular A–87. Thus, there is no need for Appendix C in Part 74. The Secretary also proposes to remove Appendix G from Part 74 and to add that Appendix to the new Part 80. The Secretary proposes this move because Part 80 applies to State and local governments and the appendix implements the Single Audit Act of 1984 which applies only to State and local governments.

Executive Order 12291

These proposed 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.

Regulatory Flexibility Act

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The amendments made by this document simply limit the applicability of 34 CFR Part 74 to institutions of higher education, hospitals, and other nonprofit organizations. None of the proposed changes will place undue burdens on small entities.

Paperwork Reduction Act of 1980

Sections 74.61, 74.73, 74.74, 74.75, 74.76, 74.82, 74.140 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period in Room 3021, Federal Office Building 6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except holidays.

Assessment of Education Impact

The Secretary particularly requests comments on whether the regulations in this document would 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 in 34 CFR Part 74

Accounting, Administrative practice and procedure, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance number does not apply)

Dated: June 2, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations, Part 74, as follows:

1. In Part 74 the table of contents and §§ 74.1 through 74.176 are revised and Appendix C is removed and reserved to read as follows:

PART 74—ADMINISTRATION OF GRANTS

Subpart A—General

Sec.

74.1 Purpose and scope of this part.
74.2 Scope of subpart.
74.3 Definitions.
74.4 Applicability of this part.
74.6 Deviations.
74.7 Special grant conditions.

Subpart B—Cash Depositories

74.10 Physical segregation and eligibility.
74.11 Checks-paid basis letter of credit.
74.12 Minority-owned banks.

Subpart C—Bonding and Insurance

74.15 General.
74.16 Construction and facility improvement.
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74.18 Source of bonds.

Subpart D—Retention and Access Requirements for Records

74.20 Applicability.
74.21 Length of retention period.
74.22 Starting date of retention period.
74.23 Substitution of microfilm.
74.24 Access to records.
74.25 Restrictions on public access.

Subpart E—[Reserved]

Subpart F—Grant-Related Income

74.40 Scope of subpart.
74.41 Meaning of program intent.
74.42 General program income.
74.43 Program income-proceeds from sale of real property and from sale of equipment and supplies acquired for use.
74.44 Program income—royalties and other income earned from a copyrighted work.
74.45 Program income—royalties or equivalent income earned from patents or from inventions.
74.46 Program income—income after grant or subgrant support not otherwise treated.
74.47 Interest earned on advance of grant funds.

Subpart G—Cost Sharing or Matching

74.50 Scope of subpart.
74.51 Definitions.
74.52 Basic rule: Costs and contributions acceptable.
74.53 Qualifications and exceptions.
74.54 Valuation of donated services.
74.55 Valuation of donated supplies and loaned equipment or space.
74.56 Valuation of donated equipment, buildings, and land.
74.57 Appraisal of real property.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems and Non-Federal Audits

74.60 Scope of subpart.
74.61 Financial management standards.

Subpart I—Financial Reporting Requirements

74.70 Scope and applicability of subpart.
74.71 Definitions.
74.72 General.
74.73 Financial Status Report.
74.74 Federal Cash Transactions Report.
74.75 Request for Advance or Reimbursement.
74.76 Outlay report and request for reimbursement for construction programs.

Subpart J—Monitoring and Reporting of Program Performance

74.80 Scope of subpart.
74.81 Monitoring by recipients.
74.82 Performance reports under nonconstruction grants.
74.83 Performance reports under construction grants.
74.84 Significant developments between scheduled reporting dates.
74.85 Site visits.

Subpart K—Grant and Subgrant Payment Requirements

74.90 Scope of subpart.
74.91 Definitions.
74.92 Basic standard.
74.93 Payment methods under nonconstruction grants.
74.94 Payment methods under construction grants.
74.95 Withholding of payments.
74.96 Requesting advances or reimbursements.

Subpart L—Programmatic Changes and Budget Revisions

74.100 Scope and applicability of this subpart.
74.101 Relationship to cost principles.
74.102 Prior approval procedures.
74.103 Programmatic changes.
74.104 Budgets generally.
74.105 Budget revisions-nonconstruction projects.
74.106 Budget revisions construction projects.
74.107 Construction and nonconstruction work under the same grant.

74.108 Authorized funds exceeding needs.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

74.110 Definitions.
74.111 Closeout.
74.112 Amounts payable to the Federal Government.
74.113 Violation of terms.
74.114 Suspension.
74.115 Termination.

Subpart N—Forms for Applying for Grants

74.120 Scope of subpart.
74.121 [Reserved].
74.122 Preapplications for Federal assistance.
74.123 Notice of preapplication review action.
74.124 [Reserved]
74.125 [Reserved]
74.126 [Reserved]
74.127 Authorized forms and instructions for nongovernmental organizations.

Subpart O—Property

General

74.130 Scope and applicability of this subpart.
74.131 Prohibition against additional requirements.
74.132 Definitions.
74.133 Title to real property, equipment, and supplies.

Real Property

74.134 Real property.

Equipment and Supplies

74.135 Exemptions for equipment and supplies subject to certain statutes.
74.136 Rights to require transfer of equipment.
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74.138 Replacement of equipment.
74.139 Disposition of equipment.
74.140 Equipment management requirements.
74.141 Supplies.

Federal Share of Real Property, Equipment, and Supplies

74.142 Federal share of property.
74.143 Subgrantee's share of market value or sales proceeds.

Intangible Personal Property

74.144 Inventions and patents.
74.145 Copyrights.

Subpart P—Procurement Standards

74.160 Scope of subpart; terminology.
74.161 General.
74.162 Code of conduct.
74.163 Free competition.
74.164 Procedural requirements.
74.165 [Reserved]
74.166 Contract provisions.

Subpart Q—Cost Principles

74.170 Scope of subpart.
74.171 [Reserved]
74.172 Institutions of higher education.
74.173 Hospitals.
74.174 Other nonprofit organizations.
74.175 Subgrants and cost-type contracts.
74.176 Costs allowable with approval.

Appendix A—[Reserved]
Appendix B—[Reserved]
Appendix C—[Reserved]
Appendix D—Part 1—Principles for determining costs applicable to research and development under grants and contracts with educational institutions
Part II—Principles for determining costs applicable to training and other educational services under grants and contracts with educational institutions
Appendix E—Principles for determining costs applicable to research and development under grants and contracts with hospitals.

Authority: 20 U.S.C. 3474; OMB Circular A-110, unless otherwise noted.

Subpart A—General

§ 74.1 Purpose and scope of this part.

(a) This part establishes uniform requirements for the administration of ED grants and principles for determining costs applicable to activities assisted by ED grants for all grantees other than State and local governments and Indian tribal organizations.

(b) Uniform requirements for State and local governments and Indian tribal organizations are in 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(c) Recipients subject to this part are also subject to 34 CFR Parts 75, 76, 77, 78, and 79, to the extent applicable.

§ 74.2 Scope of subpart.

This subpart contains general rules pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and procedures for control of deviations from the part.

§ 74.3 Definitions.

As used in this part:

"Awarding party" means (1) with respect to a grant, ED, and (2) with respect to a subgrant, the grantee. (See § 74.4(b))

"Contract" means (except as used in the definitions for "grant" in this section and except where qualified by "Federal") a procurement contract under a grant and "subcontract" means a procurement subcontract under such a contract.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, but the term does not include such subcontracts under a non-cost-type contract or subcontract.

"ED" means the U.S. Department of Education.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other equivalent report); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report). (See Subpart I of this part.)

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include any Federal procurements subject to the procurement regulations in 48 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis.

"Grantee" means the nonprofit corporation or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee an agency of a State, or one school or campus of a university. In these cases, the granting agency usually intends, or actually requires, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provision of grant programs in which eligibility is limited to organizations, such as State educational agencies, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"OMB" means the Office of Management and Budget within the Executive Office of the President.

"Recipient" means grantee or subgrantee.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, the award document or elsewhere.

§ 74.4 Applicability of this part.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (3) of this section

or where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all ED grants.

(2) With the exception of 34 CFR 74.62, which applies to Chapter 1, this part does not apply to the programs authorized under Chapter 1 and Subchapters A through C of Chapter 2 of the Education Consolidation and Improvement Act of 1981.

(3) Unless expressly made applicable by ED, this part does not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for profit organization, or individual.

(b) *Public institutions of higher education and hospitals.* Grants and subgrants to institutions of higher education and hospitals operated by a government shall be subject to provisions of this subpart.

§ 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation is any exception to this part not required by Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant term which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant term which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a recipient, or an official of ED may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) A deviation from this part may be made only when authorized by the Secretary.

§ 74.7 Special grant conditions.

(a) Without regard to the deviation control procedures of § 74.6, special grant conditions more restrictive than those prescribed in this Part 74 may be imposed as needed when ED has determined that the grantee:

(1) Is financially unstable.

(2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed.

Furthermore, in accordance with OMB Circular A–110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

Subpart B—Cash Depositories

§ 74.10 Physical segregation and eligibility.

Except as provided in § 74.11, awarding parties shall not impose grant terms which:

(a) Require the recipient to use a separate bank account for the deposit of grant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant funds.

§ 74.11 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis. A checks-paid basis letter of credit is one under which funds are not drawn until the recipient's checks have been presented to its bank for payment. (See Subpart K for definition of "letter of credit.")

§ 74.12 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks. Upon request, ED will furnish a list of minority-owned banks.

Subpart C—Bonding and Insurance

§ 74.15 General.

In administering grants and subgrants, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in §§ 74.16 through 74.18.

§ 74.16 Construction and facility improvements.

(a) *Scope of this section.* This section covers requirements for bid guarantees, performance bonds, and payments bonds when the recipient will contract for construction or facility improvement (including alterations and renovations of real property) under a grant or subgrant.

(b) *Definitions.* (1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Bids and contacts of $100,000 or less.* The recipient shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) *Bids and contracts exceeding $100,000.* The recipient may follow its own regular policy and requirements if the Secretary has determined that the Federal Government's interest will be adequately protected. If this determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

§ 74.17 Fidelity bonds.

(a) ED may require a grantee to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) A fidelity bond is a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

§ 74.18 Source of bonds.

Any bonds required under § 74.16(d)(1) through (3) or § 74.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR, Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

Subpart D—Retention and Access Requirements for Records

§ 74.20 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial and programmatic records, supporting documents, statistical

records and other records of recipients and of contractors and subcontractors under grants and subgrants, which are:

(1) Required to be maintained by the terms of an ED grant, or

(2) Otherwise reasonably considered as pertinent to an ED grant.

(b) This subpart does not apply to records maintained by the contractor or subcontractor for any of the following types of awards it has received under a grant or subgrant:

(1) Any contract or subcontract of $10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

§ 74.21 Length of retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for 3-years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid duplicate recordkeeping, awarding parties may make special arrangements with recipients to retain any records which are continuously needed for joint use. The awarding party will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding party the 3-year retention requirement is not applicable to the recipient.

Cross-reference: See 34 CFR 75.734—Record retention period. Section 75.734 contains record retention requirements imposed by the General Education Provisions Act.

§ 74.22 Starting date of retention period.

(a) *General.* (1) Where ED grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee submits to ED its single or last expenditure report for that period. However, if ED grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits to ED its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report to ED. If an expenditure report has been waived, the retention period starts on the day the report would have been due. "Expenditure report" is defined in § 74.3.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The retention period for the equipment records required by § 74.140(a) starts from the date of the equipment's disposition (§ 74.139) or replacement (§ 74.138) or transfer at the direction of the awarding party (§ 74.136).

(c) *Records for income transactions after grant or subgrant support.* (1) In some cases an ED requirement concerning the disposition of program income, as defined in Subpart F of this part, will be satisfied by applying the income to costs incurred after expiration or termination of grant or subgrant support for the activity giving rise to the income. In such a case, the retention period for the records pertaining to the costs starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) In some cases, there may be an ED requirement concerning the disposition of copyright royalities or other program income which is earned after expiration or termination of grant or subgrant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the recipient's fiscal year in which the income is earned. (See Subpart F of this part.)

(d) *Indirect cost rate proposals, cost allocation plant, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents, and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government for negotiation purposes, then the 3–year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Cross-Reference: See 34 CFR 75.734—Record retention period. Section 75.734 contains record retention requirements imposed by the General Education Provisions Act.

§ 74.23 Substitution of microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

§ 74.24 Access to records.

(a) *Records of grantees.* The Secretary and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subgrantees.* The Secretary, the Comptroller General of the United States, and the grantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the ED grant, in order to make audit, examination, excerpts, and transcripts.

(c) *Records of contractors and subcontractors.* Except as provided in § 74.20(b), the Secretary, the Comptroller General of the United States, the grantee, and (if the contract was awarded under a subgrant) the subgrantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the Ed grant, in order to make audit, examination, excerpts, and transcripts.

(d) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

§ 74.25 Restrictions on public access.

Unless required by Federal statutes, awarding parties may not impose grant terms which limit public access to records covered by this subpart except after a determination by ED that the records must be kept confidential and would have been excepted from disclosure under ED's "Freedom of Information" regulation (Part 5 of this title) if the records had belonged to ED. This section does not require recipients or their contractors and subcontractors to permit public access to their records.

Subpart E [Reserved]

Subpart F—Grant-Related Income

§ 74.40 Scope of subpart.

This subpart contains policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

§ 74.41 Meaning of program income.

(a) Except as explained in paragraphs (b) and (c) of this section, program income means gross income earned by a recipient from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost sharing or matching requirement of a grant. It includes but is not limited to such income in the form of fees for services performed during the grant or subgrant period, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient—whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the fact that the income is earned by the recipient from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(b) For research grants that are subject to an institutional cost-sharing agreement, income shall be considered program income only if it is earned from an activity part of all or the cost of which is borne as a direct cost by the Federal grant funds. An institutional cost-sharing agreement is one entered into between ED and a grantee covering all of ED's research project grants to the grantee in the aggregate.

(c) The following shall not be considered program income:

(1) [Reserved]

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant.

(d) For the purposes of this subpart, program income is divided into several categories. Each category is treated in a separate section of this subpart.

§ 74.42 General program income.

(a) *Definition.* General program income means all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support, other than the special categories of such income treated in §§ 74.43 through 74.45.

(b) *Use.* General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) of this section may always be used by recipients and must be used if neither of the other two alternatives is permitted by the terms of the grant. The alternatives in paragraph (d) or (e) of this section may be used only if expressly permitted by the terms of the grant. In specifying alternatives that may be used, the terms of the grant may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or matching requirement, costs borne by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal participation is applied to the net amount determined by deducting the income from total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume a project in which the grantee incurs $100,000 of allowable costs and receives no third-party in-kind contributions. If the grantee earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal participation. If that percentage is 90 percent, the most that could be paid to the grantee would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case the costs borne by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal participation is applied to total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless ED authorizes deferral to a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum percentage of participation would be applied to the full $100,000, and $90,000 could therefore be paid to the grantee. (It should be noted that if $20,000 of general program income is earned, only $80,000 could be paid, since a grant cannot pay for costs which have been borne by general program income.)

(e) *Additional cost alternative.* Under this alternative, the income is used for costs with are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made, Provided that the costs borne by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds.

Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Suporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

§ 74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by Subpart O of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies fabricated or purchased under a grant or subgrant and intended primarily for use in the grant- or subgrant-supported project or program rather than for sale or rental.

§ 74.44 Program income—royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient itself acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to ED grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition

§ 74.45 Program income—royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by determinations made or agreements entered into under ED's patent regulations. (See Parts 6 and 8 of this title.) If the determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipients' own policies.

§ 74.46 Program income—income after grant or subgant support not otherwise treated.

(a) This section applies to program income not treated elsewhere in this part which arises from or is attributable to an activity while supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory or merchandise fabricated or purchased by a grant-supported workshop during the period of support.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no ED requirements governing the disposition.

§ 74.47 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute grantees shall remit to the Federal Government any interest or other investment income earned on advances of ED grant funds. This includes any interest or investment income earned by cost-type contractors on advances to them that are attributable to advances of ED grant funds to the grantee. Unless the grantee receives other instructions from the responsible ED official, the grantee shall remit the amount due by check or money order payable to the Department of Education.

(b) Recipients are cautioned that they are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

Subpart G—Cost Sharing or Matching

§ 74.50 Scope of subpart.

(a) This subpart contains rules for satisfying Federal requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by Federal statute or by other terms of the grant.

(b) ED and a grantee may enter into an institutional cost-sharing argeement covering all of ED's research project grants to that grantee in the aggregate. Except as provided by the institutional cost-sharing agreement, this subpart applies to the satisfaction of the grantee's obligation under the agreement, as well as to the satisfaction of cost-sharing or matching requirements that apply only to a single grant.

§ 74.51 Definitions.

For purposes of this subpart:

"Cost sharing or matching" means the value of third-party in-kind contributions and that portion of the costs of a grant-supported project or program not borne by the Federal Government.

"Equipment" has the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the words "market value at the time of donation" shall be substituted.

"Supplies" means all tangible personal property other than "equipment" as defined in this section.

"Third-party in-kind contributions" 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.

§ 74.52 Basic rule: Costs and contributions acceptable.

With the qualifications and exceptions listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(b) The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies.

§ 74.53 Qualifications and exceptions.

(a) *Costs borne by other Federal grants.* Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to costs borne by general program income earned from a contract awarded under another Federal grant.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an ED grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the ED grant supporting the activity giving rise to the income unless the terms of the grant expressly permit the income to be used for cost sharing or matching. (This is the alternative for use of general program income described in § 74.42(d).)

(d) *Records.* Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of recipients or cost-type contractors. These records must show how the value placed on third-party in-kind contributions was arrived at. To the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(e) *Special standards for third-party in-kind contributions.* (1) Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) A third-party in-kind contribution shall not count as direct cost sharing or matching where, if the party receiving the contribution were to pay for it, the payment would be an indirect cost. Cost-sharing or matching credit for such contributions shall be given only if the recipient or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(3) The values placed on third-party in-kind contributions for cost–sharing or matching purposes shall conform to the rules in the succeeding sections of this

subpart. If a third party in-kind contribution is of a type not treated in those sections, the value placed upon it shall be fair and reasonable.

§ 74.54 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by individuals shall be valued at rates consistent with those ordinarily paid for similar work in the recipient's organization. If the recipient does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than a recipient or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services shall be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

§ 74.55 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contribution shall be valued at the market value of the supplies at the time of donation.

(b) If a third party donates the use of equipment or space in a building but retains title, the contribution shall be valued at the fair rental rate of the equipment or space.

§ 74.56 Valuation of donated equipment, buildings, and land.

If a third party donates equipment, buildings or land, and title passes to a recipient, the treatment of the donated property shall depend upon the purpose of the grant, as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant is to assist the recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(b) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant, the following rules apply:

(1) If approval is obtained from the awarding party, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In all cases, the approval may be given only if a purchase of the equipment or buildings or a purchase or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in Subpart Q of this part, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 74.57 Appraisal of real property.

In some cases under §§ 74.55 and 74.56, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, ED may require that the market value or fair rental rate be established by a certified real property appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems and Non-Federal Audits

§ 74.60 Scope of subpart.

(a) This subpart contains standards for financial management systems and non-Federal audits of recipients.

(b) Awarding parties may not impose on recipients additional financial management standards or requirements concerning non-Federal audits. The awarding parties may, however, provide recipients with suggestions and assistance on these subjects.

§ 74.61 Financial management standards.

Grantees and subgrantees shall meet the following standards for their grant and subgrant financial management systems.

(a) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accural basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient whose accounting system is not maintained on that basis shall not be required to convert it to the accrual basis; the recipient may develop the accrual information through an analysis of the documentation on hand.

(b) *Accounting records.* Records which identify adequately the source and application of funds for grant or subgrant-supported activities shall be maintained. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a government liabilities.

(c) *Internal control.* Effective control and accountability shall be maintained for all grant or subgrant cash, real and personal property covered by Subpart O of this part, and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate or specifically required, recipients shall relate financial information to performance or productivity data, including the production of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(e) *Advance payments.* Procedures shall be established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their disbursement by the recipient. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Grantees advancing cash to subgrantees shall conform sustantially to the same standards of timing and amount as apply to advances by Federal agencies to grantees, including requirements for timely reporting of cash disbursements and balances. (See Subpart K of this part.)

(f) *Allowable costs.* Procedures shall be established for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by Subpart Q of this part and the terms of the grant.

(g) *Source documentation.* Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, contract and subgrant award documents, etc.

(h) *Audit—(1) General.* (i) This paragraph applies to each recipient that is not subject to the audit requirements in the appendix to 34 CFR Part 80.

(ii) Public hospitals and public colleges and universities are subject to this paragraph if excluded under paragraph 4 of the appendix to 34 CFR Part 80.

(iii) A financial and compliance audit shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." [1] The auditors engaged by a recipient shall meet the criteria for qualifications and independence in that publication.

(2) *Purpose and scope.* The purpose of these audits shall be to determine the effectiveness of the financial management systems and internal procedures established by the recipient to meet the terms of its grants and subgrants. The recipient's auditors need not examine every grant or subgrant awarded to the recipient. Rather, audits generally should be made on an organization-wide basis to test the fiscal integrity of financial transactions and compliance with the terms of awards. These tests would include an appropriate sampling of Federal grants and subgrants.

(3) *Frequency.* These audits shall be conducted on a continuing basis or at scheduled intervals, usually once a year, but at least every two years. The frequency shall depend on the nature, size and complexity of the recipient's grant- or subgrant-supported activities.

(4) *Relation to Federal audit.* These audits may affect the frequency and scope of Federal audit. However, nothing in this section is intended to limit the right of the Federal Government to conduct an audit of a grant- or subgrant-supported activity.

(5) *Audit resolution.* The recipient shall follow a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(6) *Copies of audit reports.* A copy of each audit report, and a description of its resolution, shall be furnished to ED.

Subpart I—Financial Reporting Requirements

§74.70 Scope and applicability of subpart.

This subpart prescribes requirements and forms for grantees to report financial information to ED, and to request grant payments when a letter of credit is not used.

§74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:"Accured expenditures" are the charges by grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, and other payees; and (c) amounts "becoming owed" for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from services performed by the grantee and from goods and other tangible property delivered to purchasers, and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" means the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee.

"In-kind contributions" means "third party in-kind contributions" as defined in Subpart G of this part.

"Obligations" are the amounts of orders placed, contracts awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" are charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

"Program income" has the same meaning it has in Subpart F of this part.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

"Unliquidated obligations," for reports prepared on a cash basis, are the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the grantee for which an outlay has not been recorded.

§ 74.72 General.

(a) Except as provided in paragraphs (d) and (e) of this section, grantees shall use only the forms specified in §§ 74.73 through 74.76, and such supplementary or other forms as may from time to time be authorized by ED, for:

(1) Submitting grant financial reports to granting agencies, or

(2) Requesting advances or reimbursements when letters of credit are not used.

(b) Grantees shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 74.73 through 74.76. ED may issue substantive supplementary instructions. ED may shade out or instruct the grantee to disregard any line item that ED finds unnecessary for its decision making purposes.

(c) Grantees will not be required to submit more than the original and two copies of forms required under this subpart.

(d) ED may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. ED may accept the required information from grantees in machine usable format or computer printouts instead of prescribed formats.

(e) When ED has determined that a grantee's accounting system does not meet the standards for financial management systems contained in Subpart H of this part, it may require financial reports with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7), until such time as the standards are met.

(f) ED may waive any report required by this subpart if not needed.

(g) ED may extend the due date for any financial report upon receiving a justified request from the grantee.

§ 74.73 Financial Status Report.

(a) *Form.* Grantees shall use Standard Form 269, Financial Status Report, to report the Status of funds for all nonconstruction grants.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it uses in its accounting system.

(c) *Frequency.* ED may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 74.7 and 74.72(e). If ED does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the grant year. Final reports shall

[1] Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

be due 90 days after the expiration or termination of grant support.

§ 74.74 Federal Cash Transactions Report.

(a) *Form.* (1) For grants paid by letters of credit (or Treasury check advances) through any ED payment office except the Departmental Federal Assistance Financing System (DFAFS), the grantee shall submit to the payment office Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a. For grants paid by DFAFS, the grantee shall submit DFAFS Report 27, Recipient Report of Expenditures, to DFAFS.

(2) These reports will be used by the ED payment office to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment: *Provided,* That the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the ED payment office, grantees may be required to report the amount of cash subadvances in excess of three days' needs in the hands of their contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the ED payment office may require the report to be submitted within 15 working days following the end of each month.

§ 74.75 Request for Advance or Reimbursement.

(a) (1) *Advance payments.* Requests for Treasury check advance payments shall be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form is not used for drawdowns under a letter of credit or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants shall also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see § 74.76(a).)

(b) The frequency for submitting payment requests is treated in § 74.96.

§ 74.76 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of this form.

(2) The frequency for submitting reimbursement requests is teated in § 74.96

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to ED using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. ED will provide any necessary special instruction. However, frequency and due date shall be governed by § 74.73 (c) and (d).

(2) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75.

(3) ED may substitute the Financial Status Report specified in § 74.73 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73(b).

Subpart J—Monitoring and Reporting of Program Performance

§ 74.80 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance of recipients. These procedures are designed to place reliance on recipients to manage the day-to-day operations of their grant- and subgrant-supported activities.

§ 74.81 Monitoring by recipients.

Recipients shall monitor the performance of grant- and subgrant-supported activities. They shall review each program, function, or activity to assure that adequate progress is being made towards achieving the goals of the grant or subgrant.

§ 74.82 Performance reports under nonconstruction grants.

(a) Where ED determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, ED will require the grantee to submit a performance report only upon expiration or termination of grant support. This report will be due on the same date as the final financial Status Report unless waived by ED. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by Subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, grantees shall submit annual performance reports unless ED requires quarterly or semiannual reports. Annual reports shall be due 90 days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. A final performance report shall be due 90 days after the expiration or termination of grant support. ED may extend the due date for any performance report upon receiving a justified request from the grantee. In addition, ED may waive the requirement for any performance report which is not needed.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(d) Grantees will not be required to submit more than the original and two copies of performance reports.

§ 74.83 Performance reports under construction grants.

In general, awarding parties rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants. Formal performance reports to supplement those sources of information

shall be required only if considered necessary by the awarding party, and in no case more frequently than quarterly.

§ 74.84 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the recipient shall inform the awarding party as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

§ 74.85 Site visits.

Site visits may be made as necessary by representatives of ED to:

(a) Review program accomplishments and management control systems.

(b) Provided such technical assistance as may be required.

Subpart K—Grant and Subgrant Payment Requirements

§ 74.90 Scope of subpart.

This subpart prescribes the basic standard and the methods under which ED will make grant payments to grantees.

§ 74.91 Definitions.

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a grantee, upon its periodic request or through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized official which authorizes a recipient to draw funds needed for immediate disbursement in accordance with Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's rate of disbursements.

§ 74.92 Basic standard.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

§ 74.93 Payment methods under nonconstruction grants.

(a) Letters of credit will be used to pay ED grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the ED payment office for at least a year and the total amount of advances to be received from the ED payment office is $120,000 or more per year,

(2) The grantee has maintained, or demonstrated to ED the willingness and ability to maintain, procedures that minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the grantee does not meet the requirements in paragraph (a)(1) of this section but does meet the requirements in paragraphs (a)(2) and (3) of this section.

(c) Reimbursement by Treasury check will be preferred method when the requirements of either paragraph (a)(2) or paragraph (a)(3) of this section are not met. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

§ 74.94 Payment methods under construction grants.

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.93(a) (2) or (3), and may be used for any ED construction grant unless ED has entered into an agreement with the grantee to use a letter of credit for all ED grants, including construction grants.

(b) When the reimbursement by Treasury check method is not used, § 74.93 (a) and (b) shall apply to the construction grant. Implementing procedures under § 74.93 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(c) ED will not use the percentage of completion method to pay its construction grants. The grantee may use that method to pay its construction contractor, but if it does, ED's payments to the grantee will nevertheless be based on the grantee's actual rate of disbursements.

§ 74.95 Withholding of payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by grantees will not be withheld unless (1) the grantee has failed to comply with Federal reporting requirements or (2) the grant is suspended pursuant to § 74.114 or (3) the grantee owes money to the United States and collection of the debt by withholding grant payments will not impair the accomplishment of the objectives of any grant program sponsored by the United States.

(b) Cash withheld for failure to comply with reporting requirements but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 74.114. When a debt is to be collected, ED may withhold payments or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

§ 74.96 Requesting advances or reimbursements.

(a) If advances are made by Treasury check and the advances are not prescheduled, the grantee shall submit its requests for payment monthly. Less frequent requests are not permitted because they would result in advances covering excessive periods of time.

(b) If payments are made through reimbursement by Treasury check, the grantee may submit its requests for reimbursement monthly and may submit them more often if authorized. The grantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(c) The forms for requesting advances or reimbursements are identified in Subpart I of this part.

Subpart L—Programmatic Changes and Budget Revisions

§ 74.100 Scope and applicability of this subpart.

This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

§ 74.101 Relationship to cost principles.

The cost principles in Appendices D and E to this part contain requirements for prior approval of certain types of cost (see § 74.176). Except when waived,

those requirements apply to all grants and subgrants even if § § 74.103 through 74.106 do not.

§ 74.102 Prior approval procedures.

(a) *For grants.* When requesting a prior approval required by this subpart, grantees shall address their requests to the responsible ED grants officer. Approvals shall not be valid unless they are in writing and signed by the authorized ED official.

(b) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

§ 74.103 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding parties may require prior approval for other kinds of programmatic changes to an approved grant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope.)

(c) *Changes in key people.* The recipient of a grant or subgrant for research (or any other kind of grant or subgrant if the terms of the award make this rule applicable) shall obtain prior approval:

(1) To continue the project during any continuous period of more than 3 months without the active direction of an approved project director or principal investigator; or

(2) To replace the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award) or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(d) *Other programmatic changes.* The following shall require prior approval except to the extent explicitly included in the project plan as approved by the awarding party at the time of award:

(1) Transferring to a third party, by contracting or any other means, the actual performance of the substantive programmatic work. The term "substantive programmatic work" means activities which are central to carrying out the purpose of the project, and not merely incidental. Transfer of substantive programmatic work does not include purchase of supplies, materials, or equipment; acquisition of general or incidental support services; obtaining advice; or transfer of activities whose cost is treated as an indirect cost.

(2) Providing medical care to individuals under research grants.

Cross-Reference: See 34 CFR 75.708—Prohibition of subgrants.

§ 74.104 Budgets generally.

(a) *Definitions.* In this subpart:

(1) "Budget" means the recipient's financial plan for carrying out the project or program.

(2) "Approved budget" means a budget (including any revised budget) which has been approved by the awarding party.

(b) *Research project budgets.* For research projects, approved budgets shall not include the recipient's share of project costs.

(c) *Non-research project budgets.* For non-research projects which involve cost sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding party's share and the recipient's share). However, the awarding party may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(d) *Subdivision by programmatic segments.* Some grants encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding party may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

§ 74.105 Budget revisions—nonconstruction projects.

(a) Except as provided in paragraph (b) of this section, the recipient of a grant or subgrant having an approved budget shall obtain prior approval for any budget revision which will:

(1) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(2) Involve transfer of amounts previously budgeted for student support (tuition waivers, stipends, and other payments to or for trainees), or

(3) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(b) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding party.

(c) Except as provided in § § 74.107 and 74.176, other budget changes under nonconstruction grants do not require approval.

§ 74.106 Budget revisions—construction projects.

Unless provided otherwise by the terms of the grant or subgrant, revisions to construction project budgets do not requre approval.

§ 74.107 Construction and nonconstruction work under the same grant.

When a grant provides support for both construction and nonconstruction work, the awarding party may require prior approval before any fund or budget transfers between the two types of work.

§ 74.108 Authorized funds exceeding needs.

The recipient shall notify the awarding party promptly whenever the amount of grant or subgrant authorized funds is expected to exceed needs by more than $5,000 or 5 percent of the grant or subgrant, whichever is greater. This notification will not be required under continuing grants or subgrants if the application for the next period's funding will include an estimate of what the unobligated balance of authorized funds will be at the end of the current period.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

§ 74.110 Definition.

"Grant closeout" means the process by which ED determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and ED.

"Suspension" of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee. "Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate

of the unobligated balance in a prior period;

(b) Refusal by ED to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 74.111 Closeout.

(a) Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out ED grants, the following shall be observed:

(1) Upon request, ED shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from ED, any unobligated balance of cash advanced to the grantee.

(3) The grantee shall submit, within 90 days of the date of expiration or termination, all financial, performance, and other reports required by the terms of the grant. ED may extend the due date for any report upon receiving a justified request from the grantee, and may waive any report which is not needed.

(4) ED shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms of the grant.

(c)(1) The closeout of a grant does not affect the retention period for, or Federal rights of access to, grant records. See Subpart D of this part.

(2) If a grant is closed out without audit, ED retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property under Subpart O of this part, or with respect to any program income for which the grantee is still accountable under Subpart F of this part.

§ 74.112 Amounts payable to the Federal Government

For each grant, the following sums shall constitute a debt or debts owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by setoff or other action as provided by law:

(a) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal Government pursuant to § 74.47;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the Federal Government (see Subpart F of this part);

(d) Any amounts due the Federal Government under Subpart O of this part; and

(e) Any other amounts finally determined to be due the Federal Government under the terms of the grant.

§ 74.113 Violation of terms.

(a) When a grantee has materially failed to comply with the terms of a grant, ED may suspend the grant, in accordance with § 74.114, terminate the grant for cause, as provided in § 74.115, or take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more funding periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

§ 74.114 Suspension.

(a) When a grantee has materially failed to comply with the terms of a grant, ED may, upon reasonable notice to the grantee, suspend the grant in whole or in part. The notice of suspension will state the reasons for the suspension, any corrective action required of the grantee, and the effective date. The suspension may be made effective at once if a delayed effective date would be unreasonable considering ED's responsibilities to protect the Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to ED or given evidence satisfactory to ED that such corrective action will be taken, or until ED terminates the grant.

(b) New obligations incurred by the grantee during the suspension period will not be allowed unless ED expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the effective date of the suspension and not in anticipation of suspension or termination. At the discretion of ED, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

§ 74.115 Termination.

(a) *Termination for cause.* ED may terminate any grant in whole, or in part, at any time before the date of expiration, whenever ED determines that the grantee has materially failed to comply with the terms of the grant. ED shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination on other grounds.* Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(1) By ED with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(2) By the grantee, upon written notification to ED, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, ED determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, ED may terminate the grant in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* When a grant is terminated, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. ED will allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

Subpart N—Forms for Applying for Grants

§ 74.120 Scope of subpart.

(a) This subpart is not applicable to mandatory or formula grant programs which do not require applicants to apply to ED for funds on a project basis.

(b) ED may prescribe the form of applications by nongovernmental organizations (including hospitals and institutions of higher education operated by a government), and may use a standard facesheet for these applications.

§ 74.121 [Reserved]

§ 74.122 Preapplications for Federal assistance.

The purposes of preapplications shall be to:

(a) Establish communications between the applicant and ED;

(b) Determine the applicant's eligibility;

(c) Determine how well the project can compete with similar applications from others in order to discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

§ 74.123 Notice of preapplication review action.

(a) ED will inform applicants of the results of the review of the preapplications submitted to them.

(b) ED will send a notice to the applicant ordinarily within 45 days of the receipt of the preapplication form.

(c) If the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

§ 74.124–74.126 [Reserved]

§ 74.127 Authorized forms and instructions for nongovernmental organizations.

Nongovernmental organizations shall use application forms and instructions prescribed by ED, except that the facesheet of such applications shall be standard form 424 for grants under programs covered by Executive Order 12372.

Subpart O—Property

General

§ 74.130 Scope and applicability of this subpart.

(a) Except as explained in paragraphs (c), (d), and (e) of this section this subpart applies to real property, equipment, and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant, a subgrant, or a cost-type contract and must be either borne by grant funds or counted toward satisfying a grant cost-sharing or matching requirement.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to—

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution (as defined in § 74.51); or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

(d) Equipment or supplies acquired by a contractor under a grant or subgrant shall be subject to this subpart only if, by terms of the contract, title vests in the grantee or subgrantee.

(e) For research grants that are subject to an institutional cost-sharing agreement (see § 74.50(b)), real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is borne as a direct cost by Federal grant funds.

§ 74.131 Prohibition against additional requirements.

Recipients may follow their own property management policies and procedures: *Provided,* They observe the requirements of this subpart. Awarding parties may not impose on recipients property requirements (including property reporting requirements) not authorized by this subpart, unless specifically required by Federal statutes or Executive Orders.

§ 74.132 Definitions.

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two years. An organization may use its own definition of equipment: *Provided,* That such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"Supplies" means all tangible personal property other than equipment.

§ 74.133 Title to real property, equipment, and supplies.

Subject to the obligations and conditions set forth in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively.

Real Property

§ 74.134 Real property.

Except as otherwise provided by Federal statutes, real property to which this subpart applies shall be subject to the following requirements, in addition to any other requirements imposed by the terms of the grant:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, approval of the Secretary may be requested to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title.* Approval may be requested from ED to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (a) of this section. If approval is permissable under Federal statutes and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of ED shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property (see § 74.142) times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal Government or an eligible non-Federal party named by ED. The grantee shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. If the property belonged to a subgrantee, see § 74.143 for subgrantee's share.

Equipment and Supplies

§ 74.135 Exemptions for equipment and supplies subject to certain statutes.

(a) Some Federal statutes, in certain circumstances, permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. An example of such a statute is the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, which provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, an item of such equipment having a unit acquisition cost of $1,000 or more shall be subject to § 74.136, concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 74.138.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 74.136 Rights to require transfer of equipment.

(a) *ED right.* For items of equipment having a unit acquisition cost of $1,000 or more, ED shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by ED. This right will normally be exercised by ED only if the project or program for which the equipment was acquired is transferred from one grantee to another. The right shall be subject to the following conditions:

(1) In order for ED to exercise the right, a specific notice that it is exercising the right or considering doing so must be issued no later than the 120th day after the end of ED grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 74.135 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the notice must have been received by the grantee while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, the notice must have been received by the grantee before other permissible disposition of the equipment took place in accordance with § 74.139.

(2) If the right is exercised, the grantee shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment. (See §§ 74.142 and 74.143.)

(b) *Equipment lists.* If at any time an awarding party is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it a listing of all items of equipment that are subject to the right. This will enable the awarding party to determine which items, if any, should be transferred.

§ 74.137. Use of equipment.

(a) *Basic rule.* Equipment which has not been transferred under § 74.136 shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the equipment, if needed, in other projects or programs currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or programs currently or previously sponsored by ED.

(2) Projects or programs currently or previously sponsored by other Federal agencies.

(b) *Shared use.* If equipment is being used less than full time in the project or program for which it was originally acquired, the recipient shall make it available for use in other projects or programs currently or previously sponsored by the Federal Government: *Provided,* Such other use will not interfere with the work on the original project or program. First preference for such other use shall be given to other projects or programs sponsored by ED.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which the recipient is supporting through subgrants or through non-Federal grants. If the recipient is a subgrantee, it may also voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which are being conducted or supported by the grantee.

(d) *Other uses.* Unless ED provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part time for other purposes. However, use as described in those paragraphs shall be given priority over other uses.

§ 74.138 Replacement of equipment.

(a) Equipment may be exchanged for replacement equipment if needed. The replacement may take place either through trade-in or through sale and application of the proceeds to the acquisition cost of the replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from ED the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. However, none of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

§ 74.139 Disposition of equipment.

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal Government, disposition of the equipment shall be made as follows:

(a) *Equipment with a unit acquisition cost of less than $1,000 and equipment with no further use value.* The equipment may be retained, sold, or otherwise disposed of, with no further obligation to the Federal Government.

(b) *All other equipment.* (1) The equipment may be retained or sold, and the Federal Government shall have a right to an amount calculated by multiplying the current market value or the proceeds from sale by the Federal share of the equipment (see § 74.142). If part of the Federal share in the equipment came from an award under which the exemptions in § 74.135 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses.

(2) If the grantee's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if ED approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be remitted to the granting agency by check.

§ 74.140 Equipment management requirements.

Procedures for managing equipment (including replacement equipment) until transfer, replacement, or disposition takes place shall, as a minimum, meet the following requirments:

(a) Property records shall be maintained accurately. (Retention and access requirements for these records are explained in Subpart D of this part.) For each item of equipment, the records shall include:

(1) A description of the equipment, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment. (See § 74.142.)

(5) Acquisition date and unit acquisition cost.

(6) Location, use, and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

(b) A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Where equipment is to be sold and the Federal Government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 74.141 Supplies.

(a) If supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the Federal Government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 74.135.

Federal Share of Real Property, Equipment, and Supplies

§ 74.142 Federal share of property.

Several sections of this subpart require a determination of the Federal (or non-Federal) share of real property, equipment, or supplies. In making such a determination, the following principles shall be observed:

(a) *General.* (1) Except as explained in the succeeding paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total costs under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "costs under the grant" means allowable costs which are either borne by the grant or counted towards satisfying a cost-sharing or matching requirement of the grant. Only costs are to be counted—not the value of third-party in-kind contributions.

(2) If the property is acquired by a subgrantee, the Federal share of the subgrantee's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the grantee's costs by the latter's share of the subgrantee's costs. For example, if the Federal share of a grantee's costs is 50 percent and the subgrant bears only 50 percent of a subgrantee's costs, then the Federal share of that subgrantee's costs (and of the property acquired by that subgrantee) is 25 percent.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. The remainder might, for example, represent voluntary cost sharing or matching, or it might be

charged to a different activity. Occasionally, the amount paid for the property is only a part of its value, and the remainder is donated as an in-kind contribution by the party that provided the property.

(2) To calculate the Federal share of such property, first determine the Federal share of the acquiring party's total costs under the grant, as explained in the paragraph (a) of this section. Then multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* The Federal share of replacement equipment shall be calculated as follows:

(1) *Step 1.* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2.* Determine the percentage of the replacement equipment's cost that was covered by the amount received for trade-in or the sales proceeds from the equipment replaced.

(3) *Step 3.* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4.* If an additional outlay for the replacement equipment was charged as a direct cost either to ED grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

(d) *Institutional cost-sharing agreements.* If a grant is subject to an institutional cost-sharing agreement (see § 74.130(e)), the Federal share of property acquired under the grant shall be calculated as though there were no cost-sharing requirements applicable to the grant (that is, as if all the grantee's cost sharing were voluntary).

§ 74.143 Subgrantee's share of market value or sales proceeds.

Where this subpart requires a sharing of the market value or sales proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the grantee and the subgrantee. The subgrantee shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal Government. The remainder of the non-Federal share shall belong to the grantee.

Intangible Personal Property

§ 74.144 Inventions and patents.

ED's regulations on inventions and patents arising out of activities assisted by a grant are set forth in Parts 6 and 8 of this title.

§ 74.145 Copyrights.

(a) *Works under grants.* Unless otherwise provided by the terms of the grant, when copyrightable material is developed in the course of or under a grant, the grantee is free to copyright the material or permit others to do so.

(b) *Works under subgrants.* Unless otherwise provided by the terms of the grant or subgrant, when copyrightable material is developed in the course of or under a subgrant, the subgrantee is free to copyright the material or permit others to do so.

(c) *ED rights.* If any copyrightable material is developed in the course of or under an ED grant or subgrant, ED shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal Government purposes.

(d) *Exemption of student-developed works.* ED awards training grants and other kinds of grants under which individuals are provided stipends or other financial assistance for the primary purpose of aiding them to further their education or training. Except as provided by the terms of the grant, copyrightable material developed by an individual or group of individuals in the course of education or training pursued with such assistance shall be subject to the ED right described in paragraph (c) of this section, unless the development of the material also receives other forms of support under the same or another ED grant (such as a research grant).

Subpart P—Procurement Standards

§ 74.160 Scope of subpart; terminology.

(a) This subpart contains standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct cost by Federal grant funds.

(b) No additional procurement standards or requirements shall be imposed by awarding parties upon recipients unless specifically required by Federal statutes or Executive Orders.

(c) As used in this subpart:

(1) "Formal advertising" refers to that procurement method which involves adequate purchase description, sealed bids, and public opening of bids.

(2) "Negotiation" refers to any method of procurement other than formal advertising.

§ 74.161 General.

(a) Recipients may use their own procurement policies: *Provided,* That procurements subject to this subpart are made in accordance with the standards in this subpart.

(b) The standards in this subpart do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to ED, regarding issues arising out of its procurements. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.162 Code of conduct.

(a) The recipient shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the recipient's officers, employees, or agents. For governmental recipients, such disciplinary actions are required only to the extent otherwise permissible under the Government's laws, rules, or regulations. To the extent permissible under its laws, rules, or regulations, the governmental recipient shall also provide for actions to be taken against contractors or their agents who wrongfully take part in a violation of the code or standards of conduct.

(b) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund-raising activities.

(c) No employee, officer, or agent of a nongovernmental recipient shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her knowledge, any of the following has a financial interest in that contract:

(1) The employee, officer, or agent;

(2) Any member of his or her immediate family;

(3) His or her partner;

(4) An organization in which any of the above is an officer, director, or employee;

(5) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

§ 74.163 Free competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental recipient should be excluded from competing for that procurement except when, upon request of the recipient, ED waives this requirement for a particular procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offerer must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the recipient's interest to do so, and, in the case of governmental recipients, such rejections are in accordance with the government's applicable law, rules, or regulations.

§ 74.164 Procedural requirements.

The recipient shall establish procurement procedures which provide for, as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance of other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart.[1]

(e) The type of procuring instruments used—e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts—shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The terms of the grant may require that the following be submitted for prior approval of ED if the aggregate expenditure is expected to exceed $5,000: (1) Any proposed sole source contract and (2) any contract which a nongovernmental recipient proposes to award after seeking competition but receiving only one bid or proposal.

(h) Non governmental recipients should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement records and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

§ 74.165 [Reserved]

§ 74.166 Contract provisions.

(a) *Scope.* This section contains requirements relating to provisions that must be included in contracts that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(b) *General.* All contracts shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the party awarding the contract, including the manner by which termination will be effected and the basis for settlement. These contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(e) *Executive Order 11246.* Where applicable, construction contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).

(f) *Copeland Act.* Contracts in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back Act" (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR, Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts

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[1] Advice and assistance regarding the use of small or minority businesses may be obtained from the following Federal organizations:

1. The Small Business Administration and its field offices.

2. The Office of Minority Business Enterprise, Department of Commerce.

3. The Office for Civil Rights, ED.

in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the act and the Department of Labor's supplementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts which may give rise to inventions subject to Part 6 of this title shall include a provision requiring compliance with those parts.

(j) *Access to Records.* Contracts that are subject to Subpart D of this part shall include a provision reflecting § 74.24(c) on rights of access to the contractor's records.

(k) *Clean Air and Water Acts.* Contracts in excess of $100,000 shall contain provisions requiring compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act as amended (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported in writing to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency. (See 40 CFR, Part 15 for relevant regulations of the Environmental Protection Agency.)

Subpart Q—Cost Principles

§ 74.170 Scope of subpart.

This subpart identifies the principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants.

§ 74.171 [Reserved]

Cross-Reference: See 34 CFR Part 80—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

§ 74.172 Institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education (other than for-profit institutions) are in Part I of Appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than for-profit institutions) are in part II of Appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than for-profit institutions).

§ 74.173 Hospitals.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals are in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals.

§ 74.174 Other nonprofit organizations.

A nonprofit organization, other than an institution of higher education or a hospital, shall comply with the cost principles stated in OMB Circular A-122, as published in the **Federal Register** of July 8, 1980 at 45 FR 46022 and revised in the **Federal Register** on April 27, 1984 at 49 FR 18260, with corrections published on May 8, 1984 at 49 FR 19588.

(Approved by the Office of Management and Budget under control number 1880-0509)

(Authority: 20 U.S.C. 3474)

§ 74.175 Subgrants and cost-type contracts.

(a) The cost principles applicable to a subgrantee or cost-type contractor under an ED grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though OMB Circular A-87 would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by for-profit organizations under cost-type contracts awarded to them under ED grants are in 48 CFR, Chapter 4.

§ 74.176 Costs allowable with approval.

Each set of cost principles identifies certain costs that, in order to be allowable, must be approved by the awarding party. Other costs do not require approval. The following procedures govern approval of these costs.

(a) When costs are treated as indirect costs, acceptance of the costs as part of the indirect cost rate shall constitute approval.

(b) (1) When the costs are treated as direct costs, they must be approved in advance by the awarding party.

(2) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) If the costs are not specified in the budget, or there is no approved budget, the recipient shall obtain specific prior approval in writing from the awarding party. For this purpose the prior approval procedures of § 74.102 shall be followed, except that for formula or mandatory grants, ED's written approval may be signed by any authorized ED official.

(c) The awarding party may waive or conditionally waive the requirement for its approval of the costs. Such a waiver shall apply only to the requirement for approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of cost-type contracts, no approval shall be given which is inconsistent with the purpose or the terms of the Federal grant.

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Appendix C—[Reserved]

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2. Part 74 is revised by adding the authority citation "(Authority: 20 U.S.C. 3474; OMB Circular A-110)" after each section to the regulations.

[FR Doc. 87-12922 Filed 6-8-87; 8:45am]

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June 9, 1987

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 5, 6, 13, 15, 19, and 52
Federal Acquisition Regulation; Interim Rules With Request for Comment and Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 13, 15, 19, and 52

[Federal Acquisition Circular 84-28]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rules with request for comment and final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-28 amends the Federal Acquisition Regulation (FAR) with respect to the following: Small Business Act Thresholds and Small Business-Small Purchase Set-Aside Limitation; Competition in Contracting Act (CICA) Exception 1; Evaluation Factors; Integrity of Unit Prices; and Small Business Size Standards.

DATES:

Effective Date: April 16, 1987.

Comment Date: Comments on the interim rule sections must be received on or before August 10, 1987. Please cite FAC 84-28 in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: GSA, Attn: FAR Secretariat, 18th & F Streets, NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

FAC 84-28, Items I, II, III, and V. The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84-28, Item IV. A revised paperwork burden estimate has been prepared pursuant to 44 U.S.C. 3501, et seq. and is being submitted to OMB. Notice of such submission will be published in the **Federal Register.**

B. Regulatory Flexibility Act

FAC 84-28, Item I. This interim rule implements amendments made to the Small Business Act and the Office of Federal Procurement Policy Act by section 922 of the Defense Acquisition Improvement Act of 1986 (Title IX, Pub. L. 99-500) and is not expected to impact adversely upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq. The interim rule implements statutory direction by amending the FAR to increase the small business-small purchase set-aside limitation from $10,000 to $25,000. This action will result in an increase in the number of procurement actions reserved for exclusive small business participation, thereby benefiting such firms. Although the corresponding increase concerning Commerce Business Daily (CBD) notices of pending procurement actions, may affect those small businesses who rely exclusively upon CBD notices, experience indicates that a preponderance of small purchase awards are made to firms which have requested placement on bidders' mailing lists and have responded to solicitations issued pursuant to such lists, or who have otherwise learned of pending procurements through local posting of requirements. Therefore, although statistical data is not available in this regard, it is believed that the increase in CBD notice threshold will have only a negligible impact upon small firms. For the foregoing reasons and because the rule is based upon statute, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87-610 in correspondence.

FAC 84-28, Item II. This interim rule amends FAR 6.302-1 to implement sections 923 (a) and (c) of the Defense Acquisition Improvement Act of 1986. Under the new coverage DoD, NASA, and the Coast Guard will be permitted to contract without providing full and open competition if the supplies or services being contracted for are available from only one or a limited number of responsible sources. The preponderance of awards to small entities are made as a result of full and open competition, and the authority contained in 6.302-1 is infrequently used. Therefore, this change is expected to impact only upon an insubstantial number of small entities. Similarly, the follow-on authority is rarely applicable. Accordingly, in Initial Regulatory Flexibility Analysis has not been performed. Comments are invited. Comments from small entities concerning FAR Subpart 6.3 will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87-610 in correspondence.

FAC 84-28, Item III. This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. as its sole purpose is to ensure that, when applicable, the Government considers quality in procurement of supplies or services and provides offerors the relative importance of specific factors to be used in evaluation for award. An initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87-610 in correspondence.

FAC 84-28, Item IV. This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. because (1) revisions will have a beneficial impact on small entities which, when items being procured are commercial catalog or market price items, will no longer be required to comply with FAR 15.812 and 52.215-26 under DoD and NASA contracts, and (2) the number of affected actions is insignificant (even if all of them were with small businesses). For example, in FY 1985, less than 1 percent of all DoD awards to small businesses were made on the basis of catalog or market prices. An initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87-610 in correspondence.

FAC 84-28, Item V. Analysis of this revision indicates that it is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR

Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on this revision is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply.

C. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration to issue the regulations in FAC 84–28 (Items I, II, III, and IV) as interim rules. This action is necessary to formally implement sections 922,923, 924, and 927 of the Fiscal Year 1987 DoD Authorization Act. The Act requires implementation of Sections 923, 924, and 927 by April 16, 1987. Section 922 of the Act, which revised certain statutory thresholds and limitations, was effective upon enactment. Interim guidance on these matters was issued departmentally within DoD and, for civilian agencies, by CAAC letter.

List of Subjects in 48 CFR Parts 5, 6, 13, 15, 19, and 52

Government procurement.

Dated: June 3, 1987.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84–28]

Unless otherwise specified, all Federal Acquisition Regulations (FAR) and other directive material contained in FAC 84–28 is effective April 16, 1987.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,

Administrator.

May 11, 1987.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–28 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Small Business Act Thresholds and Small Business-Small Purchase Set-Aside Limitation

FAR 5.101, 5.201(a), 5.201(b), 5.205(c), 13.104(g), 13.105, 19.501(f)(1), 19.507, and 52.219–4 are being revised to (1) raise the threshold for publicizing proposed acquisitions, other than sole source acquisitions, from $10,000 to $25,000, (2) require posting of notices of solicitations expected to exceed $10,000 but not to exceed $25,000, and (3) raise the limitation for small business, small purchase set-asides from $10,000 to $25,000. Posting of actions over $25,000 is as required by agency regulation. These revisions are required by Pub. L. 99–500 and Pub. L. 99–661. Interim guidance on this matter was issued departmentally within DoD and, for civilian agencies, by CAAC letter dated December 5, 1986.

Item II—Competition in Contracting Act (CICA) Exception 1

FAR 6.302–1 is revised to implement sections 923 (a) and (c) of the Defense Acquisition Improvement Act of 1986 (Title IX, Pub. L. 99–500). This legislation expanded the authority for DoD and NASA to contract without providing for full and open competition if the supplies or services being contracted for are available from only one or a limited number of responsible sources. Interim guidance on this matter was issued departmentally within DoD.

Item III—Evaluation Factors

FAR 15.605(b) is changed in response to section 924 of the DoD FY 1987 Authorization and Appropriations Acts. This revision requires contracting officers to address quality in every source selection. Interim guidance on this matter was issued departmentally within DoD.

Item IV—Integrity of Unit Prices

FAR 15.812, Unit prices, and the clause at 52.215–26, Integrity of Unit Prices, are revised to implement section 927 of Pub. L. 99–500. This statute modified the previous requirements in the referenced FAR sections so that for DoD and NASA, they will no longer apply to commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. The existing FAR requirements relate to (a) the distribution of costs within contracts to ensure that unit prices are not distorted, and (b) the identification by offerors in their proposals of those items of supply they will not manufacture or to which they will not contribute significant value.

Section 927 of Pub. L. 99–500 repealed section 1245 of Pub. L. 99–525 and codified its replacement, with a revision exempting catalog or market price items, as 10 U.S.C. 2304(i). However, Congress took no action to revise section 501 of Pub. L. 98–577 (the civilian agency companion legislation to section 1245 of Pub. L. 99–525). Consequently, the Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council have agreed to revise FAR 15.812 and 52.215–26 to apply the statutory revision regarding catalog or market price items to DoD and NASA contracts only. Interim guidance on this matter was issued departmentally within DoD.

Item V—Small Business Size Standards

Effective January 1, 1987, the Office of Management and Budget put into effect a revision of the Standard Industrial Classification (SIC) System. The Small Business Administration (SBA) follows this system for size standards. Size standards are used for deciding which firms are eligible as small businesses for Federal procurements set aside for small business and other programs.

Accordingly, on January 6, 1987, SBA issued modifications to its size standards to make them compatible with the new SIC system. The modified size standards apply to solicitations issued on or after January 1, 1987. Interim guidance was issued departmentally within DoD and for civilian agencies by CAAC Letter 87–2, dated January 16, 1987.

This FAR revision incorporates the revised tables into FAR 19.1.

Therefore, 48 CFR Parts 5, 6, 13, 15, 19, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 5, 6, 13, 15, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.101 is amended by revising paragraph (a) to read as follows:

5.101 Methods of disseminating information.

* * * * *

(a) As required by the Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), contracting officers shall disseminate information on proposed contract actions as follows:

(1) For contract actions expected to exceed $25,000, or $10,000 if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors, by synopsizing in the Commerce Business Daily (CBD) (See Subpart 5.201); and

(2) For proposed contract actions expected to exceed $10,000 ($5,000 for Defense activities), but not expected to exceed $25,000, by displaying in a public place at the contracting office issuing the solicitation, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements

of 5.207 (c) and (f). Such information shall be posted not later than the date the solicitation is issued and remain posted for at least 10 days regardless of the date of award. Such information shall remain posted until after offers have been opened.

(i) If solicitations are posted in lieu of a notice, various methods of satisfying the requirements of 5.207 (c) and (f) may be employed. For example, the requirements for 5.207 (c) and (f) may be met by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements set forth above when the exemptions at 5.202(a) (1), (5) through (9), or (11) apply, or when oral solicitations are used.

(iii) Contracting officers shall post solicitations expected to exceed $25,000 if required by agency regulations.

* * * * *

3. Section 5.201 is amended by removing in paragraph (a) the words "expected to exceed $10,000", and by revising paragraphs (b)(1) and (b)(3) to read as follows:

5.201 General.

* * * * *

(b) * * *

(1) Contract actions meeting the thresholds in 5.101(a)(1);

* * * * *

(3) Modification to an existing contract for additional supplies or services that meets the thresholds in 5.101(a)(1); or

* * * * *

4. Section 5.205 is amended by revising paragraph (c) to read as follows:

5.205 Special situations.

* * * * *

(c) *Architect-engineering services.* Contracting officers shall publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by 5.202, synopsize each proposed contract action for which the total fee (including phases and options) is expected to exceed $25,000 or $10,000 if there is not reasonable expectation that at least two offers will be received from responsive and responsible offerors.

(2) When the total fee is expected to exceed $10,000 ($5,000 for Defense activities), but not exceed $25,000, the contracting officer shall comply with 5.101(a)(2). Other optional publicizing methods are authorized in accordance with 5.101(b).

* * * * *

PART 6—COMPETITION REQUIREMENTS

5. Section 6.302–1 is amended by revising paragraphs (a)(2) introductory text and (b)(1) and by adding paragraph (a)(2)(iii) to read as follows:

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) * * *

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competiton need not be provided for.

* * * * *

(iii) For DoD, NASA, and the Coast Guard, services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in (A) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 2304(d)(1)(B)).

(b) * * *

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by (i) unique supplies or services available from only one source or only one supplier with unique capabilities; or, (ii) for DoD, NASA, and the Coast Guard, unique supplies or services available from only one or a limited number of sources or from only one or a limited number of suppliers with unique capabilities.

* * * * *

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

6. Section 13.104 is amended by adding a final sentence in paragraph (g) to read as follows:

13.104 Procedures.

* * * * *

(g) * * * See 5.101(a)(2) for public display requirements.

13.105 [Amended]

7. Section 13.105 is amended by removing in the first sentence of paragraph (a) the figure "$10,000" and inserting in its place the figure "$25,000".

PART 15—CONTRACTING BY NEGOTIATION

8. Section 15.605 is amended by revising paragraph (b) to read as follows:

15.605 Evaluation factors.

* * * * *

(b) The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition officials. However, price or cost to the Government shall be included as an evaluation factor in every source selection. Quality also shall be addressed in every source selection. In evaluation factors, quality may be expressed in terms of technical management capability, personnel qualifications, prior experience, past performance, and schedule compliance. Any other relevant factors such as cost realism, may also be included.

* * * * *

9. Section 15.812–1 is amended by revising paragraph (a); by redesignating and revising the existing paragraph (b) as paragraph (c); and by adding a new paragraph (b) to read as follows:

15.812–1 General.

(a) Direct and indirect costs are generally allocated to contracts in accordance with the Cost Accounting Standards of Part 30 (when applicable) and the Contract Cost Principles and Procedures of Part 31. However, for the purpose of pricing all items of supplies, distribution of those costs within contracts shall be on a basis that ensures the unit prices are in proportion to the item's base cost (e.g., manufacturing or acquisition costs. Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(b) However, the policy in paragraph (a) of this subsection does not apply to any Department of Defense (DoD) or National Aeronautics and Space Administration (NASA) contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public. A price is "based on" a catalog or market price only if the item is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be

identified and justified without resort to cost analysis.

(c) In addition, when contracting by negotiation without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804–3(b)). The information need not be requested in connection with the award of contracts under the General Services Administration's competitive Multiple Award Schedule Program. For DoD and NASA contracts, the information shall not be requested for commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. Such information is to be used to determine whether the intrinsic value of an item has been distorted, such as through the application of overhead, and whether such items should be considered for breakout. The contracting officer may require such information in any other negotiated contracts when appropriate.

10. Section 15.812–2 is amended by revising paragraph (a) to read as follows:

15.812–2 Contract clause.

(a) The contracting officer shall insert the clause at 52.215–26, Integrity of Unit Prices, in all solicitations and contracts for other then—

(1) Small purchases under Part 13;

(2) Construction or architect-engineer services under Part 36;

(3) Utility services under Subpart 8.3; or

(4) Service contracts where supplies are not required.

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

11. Section 19.102 is amended by revising the Industry Size Standards to read as follows:

BILLING CODE 4910-13-M

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SIC	DESCRIPTION	SIZE
	DIVISION A—AGRICULTURE	
	Major Group 01-Agricultural Production-Crops	
0111-0191	Agricultural Production-Crops	$0.5
	Major Group 02-Agricultural Production-Livestock	
0211	Beef Cattle Feedlots (Custom)	$1.0
0212-0291	Agricultural Production-Livestock, except 0211 and 0252	$0.1
0252	Chicken Eggs	$1.0
	Major Group 07-Agricultural Services	
All SIC's		$3.5
	Major Group 08-Forestry	
All SIC's		$3.5
	Major Group 09-Fishing, Hunting, and Trapping	
All SIC's		$2.0
	DIVISION B—MINING	
	Major Group 10-Metal Mining	
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1061	Ferroalloy Ores, Except Vanadium	500
1081	Metal Mining Services	$3.5
1094	Uranium-Radium-Vanadium Ores	500
1099	Metal Ores, N.E.C.	500
	Major Group 12-Bituminous Coal and Lignite Mining	
1221	Bituminous and Lignite Coal Mining, Surface, and Bituminous Coal Preparation Plants	500
1222	Bituminous Coal Mining, Underground	500
1231	Anthracite Mining	500
1241	Coal Mining Services	$3.5
	Major Group 13-Oil and Gas Extraction	
1311	Crude Petroleum and Natural Gas	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services	$3.5
1389	Oil and Gas Field Services, N.E.C.	$3.5
	Major Group 14-Mining and Quarrying of Non-Metallic Minerals, Except Fuels	
1411	Dimension Stone	500
1422	Crushed and Broken Limestone	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1455	Kaolin and Ball Clay	500
1459	Clay and Related Minerals, N.E.C.	500
1474	Potash, Soda, and Borate Minerals	500
1475	Phosphate Rock	500
1479	Chemical and Fertilizer Mining, N.E.C.	500
1481	Nonmetallic Minerals (Except Fuels) Services	$3.5
1499	Nonmetallic Minerals, N.E.C.	500
	DIVISION C—CONSTRUCTION	
	Major Group 15-Building Construction-General Contractors and Operative Builders	
1521	General Contractors-Single-Family Houses	$17.0
1522	General Contractors-Residential Buildings, Other Than Single-Family	$17.0
1531	Operative Builders	$17.0
1541	General Contractors-Industrial Buildings and Warehouses	$17.0
1542	General Contractors-Nonresidential Buildings, Other Than Industrial Buildings and Warehouses	$17.0
	Major Group 16-Construction Other Than Building Construction-General Contractors	
1611	Highway and Street Construction	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction	$17.0
1623	Water, Sewer, Pipe Line, Communication and Power Line Construction	$17.0
1629	Heavy Construction, Except Dredging, N.E.C.	$17.0
1629	Dredging and Surface Cleanup Activities[2]	$9.5
	Major Group 17-Construction-Special Trade Contractors	
1711	Plumbing, Heating (Except Electric), and Air Conditioning	$7.0
1721	Painting, Paper Hanging, and Decorating	$7.0
1731	Electrical Work	$7.0

Notes: Size standards preceded by a dollar sign ($) are in millions of dollars. All others are in number of employees unless specified otherwise.
N.E.C.: Not Elsewhere Classified.

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SIC	DESCRIPTION	SIZE
1741	Masonry, Stone Setting, and Other Stonework	$7.0
1742	Plastering, Drywall, Acoustical, and Insulation Work	$7.0
1743	Terrazzo, Tile, Marble, and Mosaic Work	$7.0
1751	Carpentering	$7.0
1752	Floor Laying and Other Floor Work, N.E.C.	$7.0
1761	Roofing and Sheet Metal Work	$7.0
1771	Concrete Work	$7.0
1781	Water Well Drilling	$7.0
1791	Structural Steel Erection	$7.0
1793	Glass and Glazing Work	$7.0
1794	Excavating and Foundation Work	$7.0
1795	Wrecking and Demolition Work	$7.0
1796	Installation or Erection of Building Equipment, N.E.C.	$7.0
1799	Special Trade Contractors, N.E.C.	$7.0
--	Base Housing Maintenance[16]	$7.0
	DIVISION D-MANUFACTURING[3]	
	Major Group 20-Food and Kindred Products	
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products	500
2015	Poultry Slaughtering, Dressing and Processing	500
2021	Creamery Butter	500
2022	Cheese, Natural and Processed	500
2023	Condensed and Evaporated Milk	500
2024	Ice Cream and Frozen Desserts	500
2026	Fluid Milk	500
2032	Canned Specialties	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams and Jellies[4]	500
2034	Dehydrated Fruits, Vegetables, and Soups	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces, and Seasoning, and Salad Dressings	500
2037	Frozen Fruit, Fruit Juices, and Vegetables	500
2038	Frozen Specialities, N.E.C.	500
2041	Flour and Other Grain Mill Products	500
2043	Cereal Breakfast Foods	1,000
2044	Rice Milling	500
2045	Blended and Prepared Flour	500
2046	Wet Corn Milling	750
2047	Dog and Cat Food	500
2048	Prepared Feeds, N.E.C.	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers	500
2052	Cookies and Crackers	750
2053	Frozen Bakery Products	500
2061	Cane Sugar, Except Refining Only	500
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2064	Confectionery Products	500
2066	Chocolate and Cocoa Products	500
2067	Chewing Gum	500
2068	Salted and Roasted Nuts and Seeds	500
2074	Cottonseed Oil Mills	500
2075	Soybean Oil Mills	500
2076	Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2077	Animal and Marine Fats and Oils	500
2079	Shortening, Table Oils, Margarine and Other Edible Fats and Oils, N.E.C.	750
2082	Malt Beverages	500
2083	Malt	500
2084	Wines, Brandy, and Brandy Spirits	500
2085	Distilled, Rectified, and Blended Liquors	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters	500
2087	Flavoring Extracts and Flavoring Syrups, N.E.C.	500
2091	Canned and Cured Seafoods	500
2092	Fresh or Frozen Packaged Fish and Seafoods	500
2095	Roasted Coffee	500
2096	Potato Chips and Similar Products	500
2097	Manufactured Ice	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles	500
2099	Food Preparations, N.E.C.	500
	Major Group 21-Tobacco Manufacturers	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Tobacco (Chewing and Smoking) and Snuff	500
2141	Tobacco Stemming and Redrying	500
	Major Group 22-Textile Mill Products	
2211	Broad Woven Fabric Mills, Cotton	1,000
2221	Broad Woven Fabric Mills, Man-Made Fiber, and Silk	500
2231	Broad Woven Fabric Mills, Wool (Including Dyeing and Finishing)	500
2241	Narrow Fabrics and Other Smallwares Mills: Cotton, Wool, Silk, and Man-Made Fiber	500

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N.E.C.: Not Elsewhere Classified.

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SIC	DESCRIPTION	SIZE
2251	Women's Full Length and Knee Length Hosiery	500
2252	Hosiery, Except Women's Full Length and Knee Length Hosiery	500
2253	Knit Outerwear Mills	500
2254	Knit Underwear Mills	500
2257	Circular Knit Fabric Mills	500
2258	Warp Knit Fabric Mills	500
2259	Knitting Mills	500
2261	Finishers of Broad Woven Fabrics of Cotton	1,000
2262	Finishers of Broad Woven Fabrics of Man-Made Fiber and Silk	500
2269	Finishers of Textiles, N.E.C.	500
2273	Carpets and Rugs	500
2281	Yarn Mills	500
2282	Throwing and Winding Mills	500
2284	Thread Mills	500
2295	Coated Fabrics, Not Rubberized	1,000
2296	Tire Cord and Fabric	1,000
2297	Nonwoven Fabrics	500
2298	Cordage and Twine	500
2299	Textile Goods, N.E.C.	500
	Major Group 23-Apparel and Other Finished Products Made from Fabrics and Similar Materials	
2311	Men's, Youths', and Boys' Suits, Coats, and Overcoats	500
2321	Men's and Boys' Shirts	500
2322	Men's and Boys' Underwear and Nightwear	500
2323	Men's, Youths', and Boys' Neckwear	500
2325	Men's and Boys' Separate Trousers and Casual Slacks	500
2326	Men's and Boys' Work Clothing	500
2329	Men's, Youths', and Boys' Clothing, N.E.C.	500
2331	Women's, Misses', and Juniors' Blouses, Waists, and Shirts	500
2335	Women's, Misses', and Juniors' Dresses	500
2337	Women's, Misses', and Juniors' Suits, Skirts, and Coats	500
2339	Women's, Misses', and Juniors' Outerwear, N.E.C.	500
2341	Women's, Misses's, Children's, and Infants' Underwear and Nightwear	500
2342	Brassieres, Girdles, and Allied Garments	500
2353	Hats, Caps, and Millinery	500
2361	Girls', Children's, and Infants' Dresses, Blouses, Waists, and Shirts	500
2369	Children's Outerwear, N.E.C.	500
2371	Fur Goods	500
2381	Dress and Work Gloves, Except Knit and All-Leather	500
2384	Robes and Dressing Gowns	500
2385	Raincoats and Other Waterproof Outer Garments	500
2386	Leather and Sheep Lined Clothing	500
2387	Apparel Belts	500
2389	Apparel and Accessories, N.E.C	500
2391	Curtains and Draperies	500
2392	House Furnishings, Except Curtains and Draperies	500
2393	Textile Bags	500
2394	Canvas and Related Products	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade	500
2396	Automotive Trimmings, Apparel Finding, and Related Products	500
2397	Schiffli Machine Embroideries	500
2399	Fabricated Textile Products, N.E.C.	500
	Major Group 24-Lumber and Wood Products, Except Furniture	
2411	Logging	500
2421	Sawmills and Planning Mills	500
2426	Hardwood Dimension and Flooring Mills	500
2429	Special Product Sawmills, N.E.C.	500
2431	Millwork	500
2434	Wood Kitchen Cabinets	500
2435	Hardwood Veneer and Plywood	500
2436	Softwood Veneer and Plywood	500
2439	Structural Wood Members, N.E.C.	500
2441	Nailed and Lock Corner Wood Boxes and Shook	500
2448	Wood Pallets and Skids	500
2449	Wood Containers, N.E.C.	500
2451	Mobile Homes	500
2452	Prefabricated Wood Buildings and Components	500
2491	Wood Preserving	500
2493	Reconstituted Wood Products	500
2499	Wood Products, N.E.C.	500
	Major Group 25-Furniture and Fixtures	
2511	Wood Household Furniture, Except Upholstered	500
2512	Wood Household Furniture, Upholstered	500
2514	Metal Household Furniture	500
2515	Mattresses and Bedsprings	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets	500

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N.E.C.: Not Elsewhere Classified.

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SIC	DESCRIPTION	SIZE
2519	Household Furniture, N.E.C.	500
2521	Wood Office Furniture	500
2522	Office Furniture, Except Wood	500
2531	Public Building and Related Furniture	500
2541	Wood Partitions, Shelving, Lockers, and Office and Store Fixtures	500
2542	Partitions and Fixtures, Except Wood	500
2591	Drapery Hardware, and Window Blinds and Shades	500
2599	Furniture and Fixtures, N.E.C.	500
	Major Group 26-Paper and Allied Products	
2611	Pulp Mills	750
2621	Paper Mills	750
2631	Paperboard Mills	750
2652	Set-up Paperboard Boxes	500
2653	Corrugated and Solid Fiber Boxes	500
2655	Fiber Cans, Tubes, Drums, and Similar Products	500
2656	Sanitary Food Containers	750
2657	Folding Paperboard Boxes	750
2661	Building Paper and Building Board Mills	750
2671	Paper Coating and Laminating for Packaging	500
2672	Paper Coating and Laminating, Except for Packaging	500
2673	Bags: Plastics, Laminated, and Coated	500
2674	Bags: Uncoated Paper and Multiwall	500
2675	Die-Cut Paper and Paper Board	500
2676	Sanitary Paper Products, N.E.C.	500
2677	Envelopes	500
2678	Stationery Products	500
2679	Converted Paper Products, N.E.C.	500
	Major Group 27-Printing, Publishing, and Allied Industries	
2711	Newspapers: Publishing, Publishing and Printing	500
2721	Periodicals: Publishing, Publishing and Printing	500
2731	Books: Publishing, Publishing and Printing	500
2732	Book Printing	500
2741	Miscellaneous Publishing	500
2752	Commercial Printing, Lithograph	500
2754	Commercial Printing, Gravure	500
2759	Commercial Printing, N.E.C.	500
2761	Manifold Business Forms	500
2771	Greeting Card Publishing	500
2782	Blankbooks, Looseleaf Binders and Devices	500
2789	Bookbinding and Related Work	500
2791	Typesetting	500
2796	Platemaking	500
	Major Group 28-Chemicals and Allied Products	
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823	Cellulosic Man-Made Fibers	1,000
2824	Synthetic Organic Fibers, Except Cellulosic	1,000
2833	Medicinal Chemicals and Botanical Products	750
2834	Pharmaceutical Preparations	750
2835	Diagnostic Substances	500
2836	Biological Products, Except Diagnostic Substances	500
2841	Soap and Other Detergents, Except Specialty Cleaners	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils and Assistants	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products	500
2861	Gum and Wood Chemicals	500
2865	Cyclic (Coal Tar) Crudes, and Cyclic Intermediates, Dyes, and Organic Pigment (Lakes and Toners)	750
2869	Industrial Organic Chemicals, N.E.C.	1,000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
	Major Group 29-Petroleum Refining and Related Industries	
2911	Petroleum Refining[3]	1,500
2951	Paving Mixtures and Blocks	500
2952	Asphalt Felts and Coatings	750
2992	Lubricating Oils and Greases	500
2999	Products of Petroleum and Coal, N.E.C.	500

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N.E.C.: Not Elsewhere Classified.

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SIC	DESCRIPTION	SIZE
	Major Group 30-Rubber and Miscellaneous Plastics Products	
3011	Tires and Inner Tubes[6]	1,000
3021	Rubber and Plastics Footwear	1,000
3052	Rubber and Plastics Hose and Belting	500
3053	Gaskets, Packing, and Sealing Devices	500
3061	Molded, Extruded, and Lathe-Cut Rubber Mechanical Goods	500
3069	Fabricated Rubber Products, N.E.C.	500
3081	Unsupported Sheet and Film	500
3082	Unsupported Profile Shapes	500
3083	Laminated Plate and Sheet	500
3084	Pipe	500
3085	Bottles	500
3086	Plastics Foam Products	500
3087	Custom Compounding of Purchased Resins	500
3088	Plumbing Fixtures	500
3089	Plastics Products, N.E.C.	500
	Major Group 31-Leather and Leather Products	
3111	Leather Tanning and Finishing	500
3131	Boot and Shoe Cut Stock and Findings	500
3142	House Slippers	500
3143	Men's Footwear, Except Athletic	500
3144	Women's Footwear, Except Athletic	500
3149	Footwear, Except Rubber, N.E.C.	500
3151	Leather Gloves and Mittens	500
3161	Luggage	500
3171	Women's Handbags and Purses	500
3172	Personal Leather Goods, Except Women's Handbags and Purses	500
3199	Leather Goods, N.E.C.	500
	Major Group 32-Stone, Clay, Glass, and Concrete Products	
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glasswear, N.E.C.	750
3231	Glass Products, Made of Purchased Glass	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile	500
3253	Ceramic Wall and Floor Tile	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	750
3262	Vitreous China Table and Kitchen Articles	500
3263	Fine Earthenware (Whiteware) Table and Kitchen Articles	500
3264	Porcelain Electrical and Electronic Supplies	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick	500
3272	Concrete Products, Except Block and Brick	500
3273	Ready-Mixed Concrete	500
3274	Lime	500
3275	Gypsum Products	1,000
3281	Cut Stone and Stone Products	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3295	Minerals and Earths, Ground or Otherwise Treated	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C.	500
	Major Group 33-Primary Metal Industries	
3312	Blast Furnaces (Including Coke Ovens), Steel Works, and Rolling Mills	1,000
3313	Electrometallurgical Products	750
3315	Steel Wire Drawing and Steel Nails and Spikes	1,000
3316	Cold Rolled Steel Sheet, Strip, and Bars	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray Iron Foundries	500
3322	Malleable Iron Foundries	500
3324	Steel Investment Foundries	500
3325	Steel Foundries, N.E.C.	500
3331	Primary Smelting and Refining of Copper	1,000
3334	Primary Production of Aluminum	1,000
3339	Primary Nonferrous Metals, N.E.C.	500
3341	Secondary Smelting and Refining of Nonferrous Metals	500
3351	Rolling, Drawing, and Extruding of Copper	750
3353	Aluminum Sheet, Plate, and Foil	750
3354	Aluminum Extruded Products	750
3355	Aluminum Rolling and Drawing, N.E.C.	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750
3357	Drawing and Insulating of Nonferrous Wire	1,000
3363	Aluminum Die Castings	500
3364	Nonferrous Die Castings, Except Aluminum	500
3365	Aluminum Foundries	500
3366	Copper Foundries	500
3369	Nonferrous Foundries, Except Aluminum and Copper	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C.	750

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N.E.C.: Not Elsewhere Classified.

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SIC	DESCRIPTION	SIZE
	Major Group 34-Fabricated Metal Products, Except Machinery and Transportation Equipment	
3411	Metal Cans	1,000
3412	Metal Shopping Barrels, Drums, Kegs, and Pails	500
3421	Cutlery	500
3423	Hand and Edge Tools, N.E.C.	500
3425	Hand Saws and Saw Blades	500
3429	Hardware, N.E.C.	500
3431	Enameled Iron and Metal Sanitary Ware	750
3432	Plumbing Fixture Fittings	500
3433	Heating Equipment, Except Electric	500
3441	Fabricated Structural Metal	500
3442	Metal Doors, Sash, and Trim	500
3443	Fabricated Plate Work (Boiler Shops)	500
3444	Sheet Metal Work	500
3446	Architectural and Ornamental Metal Work	500
3448	Prefabricated Metal Buildings and Components	500
3449	Miscellaneous Metal Work	500
3451	Screw Machine Products	500
3452	Bolts, Nuts, Screws, Rivets, and Washers	500
3462	Iron and Steel Forgings	500
3463	Nonferrous Forgings	500
3465	Automotive Stampings	500
3466	Crowns and Closures	500
3469	Metal Stampings, N.E.C.	500
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring	500
3479	Coating, Engraving, and Allied Services, N.E.C.	500
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms, N.E.C.	1,500
3484	Small Arms	1,000
3489	Ordnance and Accessories, N.E.C.	500
3491	Industrial Valves	500
3492	Fluid Power Valves and Hose Fittings	500
3493	Steel Springs, Except Wire	500
3494	Valves and Pipe Fittings, N.E.C.	500
3495	Wire Springs	500
3496	Miscellaneous Fabricated Wire Products	500
3497	Metal Foil and Leaf	500
3498	Fabricated Pipe and Fabricated Pipe Fittings	500
3499	Fabricated Metal Products, N.E.C.	500
	Major Group 35-Machinery, Except Electrical	
3511	Steam, Gas, and Hydraulic Turbines and Turbine Generator Set Units	1,000
3519	Internal Combustion Engines, N.E.C.	1,000
3523	Farm Machinery and Equipment	500
3524	Garden Tractors and Lawn and Garden Equipment	500
3531	Construction Machinery	750
3532	Mining Machinery and Equipment, Except Oil Field Machinery and Equipment	500
3533	Oil Field Machinery and Equipment	500
3534	Elevators and Moving Stairways	500
3535	Conveyors and Conveying Equipment	500
3536	Hoists, Cranes, and Monorails	500
3537	Industrial Trucks and Tractors	750
3541	Machine Tools, Metal Cutting Types	500
3542	Machine Tools, Metal Forming Types	500
3543	Industrial Patterns	500
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds	500
3545	Machine Tool Accessories and Measuring Devices	500
3546	Power Driven Hand Tools	500
3547	Rolling Mill Machinery and Equipment	500
3548	Welding Apparatus	500
3549	Metalworking Machinery, N.E.C.	500
3552	Textile Machinery	500
3553	Woodworking Machinery	500
3554	Paper Industries Machinery	500
3555	Printing Trades Machinery	500
3556	Food Products Machinery	500
3559	Special Industry Machinery, N.E.C.	500
3561	Pumps and Pumping Equipment, Except Fluid Power Pumps	500
3562	Ball and Roller Bearings	750
3563	Air and Gas Compressors	500
3564	Blowers and Exhaust and Ventilation Fans	500
3565	Packaging Machinery	500
3566	Speed Changers, Drives, and Gears	500
3567	Industrial Furnaces and Ovens	500
3568	Mechanical Power Transmission Equipment, N.E.C.	500
3569	General Industrial Machinery, N.E.C.	1,000
3571	Computers	1,000
3572	Computer Storage Devices	1,000
3575	Computer Terminals	1,000
3577	Computer Peripheral Equipment, N.E.C.	1,000
3578	Calculating and Accounting Machines	1,000
3579	Office Machines, N.E.C.	500
3581	Automatic Merchandising Machines	500
3582	Commercial Laundry, Dry Cleaning, and Pressing Machines	500
3585	Refrigeration and Heating Equipment	750
3586	Measuring and Dispensing Pumps	500
3589	Service Industry Machines, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves	500

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N.E.C.: Not Elsewhere Classified.

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PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS 19.102

SIC	DESCRIPTION	SIZE
3593	Fluid Power Cylinders and Actuators	500
3594	Fluid Power Pumps and Motors	500
3596	Scales and Balance, Except Laboratory	500
3599	Machinery, Except Electrical, N.E.C.	500
	Major Group 36-Electrical and Electronic Machinery, Equipment and Supplies	
3612	Power, Distribution and Specialty Transformers	750
3613	Switchgear and Switchboard Apparatus	750
3621	Motors and Generators	1,000
3624	Carbon and Graphite Products	750
3625	Relays and Industrial Controls	750
3629	Electrical Industrial Apparatus, N.E.C.	500
3631	Household Cooking Equipment	750
3632	Household Refrigerators and Home and Farm Freezers	1,000
3633	Household Laundry Equipment	1,000
3634	Electric Housewares and Fans	750
3635	Household Vacuum Cleaners	750
3639	Household Appliances, N.E.C.	500
3641	Electric Lamps	1,000
3643	Current-Carrying Wiring Devices	500
3644	Noncurrent-Carrying Wiring Devices	500
3645	Residential Electric Lighting Fixtures	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures	500
3647	Vehicular Lighting Equipment	500
3648	Lighting Equipment, N.E.C.	500
3651	Radio and Television Receiving Sets, Except Communication Types	750
3652	Phonograph Records and Pre-Recorded Magnetic Tape	750
3661	Telephone and Telegraph Apparatus	1,000
3663	Radio and TV Communications Systems and Equipment, and Broadcast and Studio Equipment	750
3669	Other Communications Equipment, N.E.C.	750
3671	Electron Tubes	750
3672	Printed Circuit Boards	500
3674	Semiconductors and Related Devices	500
3675	Electronic Capacitors	500
3676	Resistors, for Electronic Applications	500
3677	Electronic Coils, Transformers, and Other Inductors	500
3678	Connectors, for Electronic Applications	500
3679	Electronic Components, N.E.C.	500
3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet	1,000
3694	Electrical Equipment for Internal Combustion Engines	750
3695	Recording Media	1,000
3699	Electrical Equipment, and Supplies, N.E.C.	500
	Major Group 37-Transportation Equipment	
3711	Motor Vehicles and Passenger Car Bodies	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicle Parts and Accessories	500
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts	1,000
3728	Aircraft Equipment, N.E.C.[17]	1,000
3731	Shipbuilding and Repairing	1,000
3732	Boat Building and Repairing	500
3743	Railroad Equipment	1,000
3751	Motorcycles, Bicycles, and Parts	500
3761	Guided Missiles and Space Vehicles	1,000
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000
3792	Travel Trailers and Campers	500
3795	Tanks and Tank Components	1,000
3799	Transportation Equipment, N.E.C.	500
	Major Group 38-Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks	
3812	Search, Detection, Navigation, and Guidance Systems and Instruments	750
3821	Laboratory Apparatus and Furniture	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables, and Related Products	500
3824	Totalizing Fluid Meters and Counting Devices	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals	500
3826	Analytical Instruments	500
3827	Optical Instruments	500
3829	Measuring and Controlling Devices, N.E.C.	500
3841	Surgical and Medical Instruments and Apparatus	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies	500
3843	Dental Equipment and Supplies	500
3844	X-Ray Apparatus and Tubes	500
3845	Electromedical and Electro Therapeutic Apparatus	500

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SIC	DESCRIPTION	SIZE
3851	Ophthalmic Goods	500
3861	Photographic Equipment and Supplies	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts	500
	Major Group 39-Miscellaneous Manufacturing Industries	
3911	Jewelry, Precious Metal	500
3914	Silverware, Plate Ware, and Stainless Steel Wire	500
3915	Jewelers' Findings and Materials, and Lapidary Work	500
3931	Musical Instruments	500
3942	Dolls	500
3944	Games, Toys, and Children's Vehicles; Except Dolls and Bicycles	500
3949	Sporting and Athletic Goods, N.E.C.	500
3951	Pens, Mechanical Pencils, and Parts	500
3952	Lead Pencils, Crayons, and Artists' Materials	500
3953	Marking Devices	500
3955	Carbon Paper and Inked Ribbons	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal	500
3965	Needles, Pins, Buttons, and Clothing Fasteners	500
3991	Brooms and Brushes	500
3993	Signs and Advertising Displays	500
3995	Burial Caskets	500
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C.	500
3999	Manufacturing Industries, N.E.C.	500
	DIVISION E—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS AND SANITARY SERVICES	
	Major Group 40-Railroad Transportation	
4011	Railroads, Line-Haul Operating	1,500
4013	Switching and Terminal Establishments	500
	Major Group 41-Local and Suburban Transit and Interurban Highway Passenger Transportation	
4111	Local and Suburban Transit	$3.5
4119	Local Passenger Transportation, N.E.C.	$3.5
4121	Taxicab	$3.5
4131	Intercity and Rural Highway Passenger Transportation	$3.5
4141	Local Passenger Transportation Charter Service	$3.5
4142	Passenger Transportation Charter Service, Except Local	$3.5
4151	School Buses	$3.5
4173	Bus Terminal and Service Facilities	$3.5
	Major Group 42-Motor Freight Transportation and Warehousing	
4212	Local Trucking Without Storage[7]	$12.5
4213	Trucking, Except Local	$12.5
4214	Local Trucking With Storage	$12.5
4215	Courier, Services, Except By Air	$12.5
4221	Farm Product Warehousing and Storage	$12.5
4222	Refrigerated Warehousing	$12.5
4225	General Warehousing and Storage	$12.5
4226	Special Warehousing and Storage, N.E.C.	$12.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	$3.5
	Major Group 44-Water Transportation[8]	
4412	Deep Sea Foreign Transportation of Freight	500
4424	Deep Sea Domestic Transportation of Freight	500
4432	Freight Transportation on the Great Lakes and Saint Lawrence Seaway	500
4449	Water Transportation of Freight, N.E.C.	500
4459	Local Water Transportation, N.E.C.	500
4481	Deep Sea Transportation of Passengers, Except by Ferries	500
4482	Ferries	500
4489	Water Transportation of Passengers, N.E.C.	500
4491	Marine Cargo Handling	$12.5
4492	Towing and Tugboat Services	$3.5
4493	Marinas	$3.5
4499	Water Transportation Services, N.E.C.	$3.5
	Major Group 45-Transportation by Air[8]	
4512	Air Transportation, Scheduled	[9]1,500
4513	Air Courier Services	[9]1,500
4522	Air Transportation, Nonscheduled	[9]1,500
4581	Services Related to Air Transportation	$3.5
	Major Group 46-Pipe Lines, Except Natural Gas	
4612	Crude Petroleum Pipe Lines	1,500
4613	Refined Petroleum Pipe Lines	1,500
4619	Pipe Lines, N.E.C.	$17.0

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SIC	DESCRIPTION	SIZE
	Major Group 47-Transportation Services	
4724	Travel Agencies	[10]$3.5
4725	Tour Operators	$3.5
4729	Arrangement of Passenger Transportation, N.E.C.	$3.5
4731	Freight Forwarding and Arrangement	$12.5
4741	Railroad Car Rental	$3.5
4783	Packing and Crating	$12.5
4785	Inspection Services, Fixed Facilities, N.E.C.	$3.5
4789	Services Incidental to Transportation, N.E.C.	$3.5
	Major Group 48-Communications	
4812	Radio Telephone Communication Services	1,500
4813	Telephone Communications, Except Radio Telephone	1,500
4832	Radio Broadcasting	$3.5
4833	Television Stations	$7.0
4841	Cable and Other Pay TV	$7.5
4899	Communications Services, N.E.C.	$7.5
	Major Group 49-Electric, Gas, and Sanitary Services	
4911	Electric Services	[20]4
4941	Water Supply	$3.5
4952	Sewage Systems	$3.5
4953	Refuse Systems[11]	$6.0
4959	Sanitary Services, N.E.C.	$3.5
4961	Steam Supply	$6.0
4971	Irrigation Systems	$3.5
	DIVISION F—WHOLESALE TRADE	
	Major Group 50-Durable Goods	
5012	Automobiles and Other Motor Vehicles	100
5013	Motor Vehicle Parts and Supplies, New	100
5014	Tires and Tubes	100
5015	Motor Vehicle Parts, Used	100
5021	Furniture	100
5023	Home Furnishings	100
5031	Lumber, Plywood, and Millwork	100
5032	Brick, Stone, and Related Products	100
5033	Roofing, Siding, and Insulation	100
5039	Construction Materials, N.E.C.	100
5043	Photographic Equipment and Supplies	100
5044	Office Equipment	100
5045	Computers and Computer Peripheral Equipment and Software	100
5046	Commercial Equipment, N.E.C.	100
5047	Medical and Hospital Equipment	100
5048	Ophthalmic Goods	100
5049	Professional Equipment, N.E.C.	100
5063	Electrical Apparatus and Equipment	100
5064	Electrical Appliances, Television and Radio Sets	100
5065	Electronic Parts and Equipment	100
5072	Hardware	100
5074	Plumbing and Heating Equipment and Supplies (Hydronics)	100
5075	Warm Air Heating and Air Conditioning Equipment and Supplies	100
5078	Refrigeration Equipment and Supplies	100
5082	Construction and Mining Machinery and Equipment	100
5083	Farm and Garden Machinery and Equipment	100
5084	Industrial Machinery	100
5085	Industrial Supplies	100
5087	Service Establishment Equipment and Supplies	100
5088	Transportation Equipment and Supplies, Except Motor Vehicles	100
5091	Sporting and Recreational Goods	100
5092	Toys and Hobby Groups and Supplies	100
5093	Scrap and Waste Materials	100
5094	Jewelry, Watches, Diamonds and Other Precious Stones	100
5099	Durable Goods, N.E.C.	100
	Major Group 51-Wholesale Trade-Nondurable Goods	
5111	Printing and Writing Paper	100
5112	Stationery Supplies	100
5113	Industrial and Personal Service Paper	100
5122	Drugs, Drug Proprietaries, and Druggists' Sundries	100
5131	Piece Goods and Notions	100
5136	Men's and Boys' Clothing and Furnishings	100
5137	Women's, Children's and Infants' Clothing and Accessories	100
5139	Footwear	100
5141	Groceries, General Line	100
5142	Frozen Foods	100
5143	Dairy Products	100
5144	Poultry and Poultry Products	100
5145	Confectionery	100
5146	Fish and Seafoods	100
5147	Meats and Meat Products	100
5148	Fresh Fruits and Vegetables	100
5149	Groceries and Related Products, N.E.C.	100
5153	Grain	100
5154	Livestock	100
5159	Farm-Product Raw Materials, N.E.C.	100
5162	Plastics Materials and Basic Shapes	100
5169	Chemicals and Allied Products, N.E.C.	100
5171	Petroleum Bulk Stations and Terminals	100

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SIC	DESCRIPTION	SIZE
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals	100
5181	Beer and Ale	100
5182	Wines and Distilled Alcoholic Beverages	100
5191	Farm Supplies	100
5192	Books, Periodicals, and Newspapers	100
5193	Flowers and Florists' Supplies	100
5194	Tobacco and Tobacco Products	100
5198	Paints, Varnishes, and Supplies	100
5199	Nondurable Goods, N.E.C.	100
	DIVISION G—RETAIL TRADE	
	Major Group 52-Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	
5211	Lumber and Other Building Materials Dealers	$3.5
5231	Paint, Glass, and Wallpaper Stores	$3.5
5251	Hardware Stores	$3.5
5261	Retail Nurseries, Lawn and Garden Supply Stores	$3.5
5271	Mobile Home Dealers	$6.5
	Major Group 53-General Merchandise Stores	
5311	Department Stores	$13.5
5331	Variety Stores	$5.5
5399	Miscellaneous General Merchandise Stores	$3.5
	Major Group 54-Food Stores	
5411	Grocery Stores	$13.5
5421	Meat and Fish (Seafood) Markets	$3.5
5431	Fruit Stores and Vegetable Markets	$3.5
5441	Candy, Nut, and Confectionery Stores	$3.5
5451	Dairy Products Stores	$3.5
5461	Retail Bakeries	$3.5
5499	Miscellaneous Food Stores	$3.5
	Major Group 55-Automotive Dealers and Gasoline Service Stations	
5511	Motor Vehicle Dealers (New and Used)	$11.5
5521	Motor Vehicle Dealers (Used Only)	$11.5
5531	Auto and Home Supply Stores	$3.5
5541	Gasoline Service Stations	$4.5
5551	Boat Dealers	$3.5
5561	Recreational Vehicle Dealers	$3.5
5571	Motorcycle Dealers	$3.5
5599	Automotive Dealers, N.E.C.[12]	$3.5
	Major Group 56-Apparel and Accessory Stores	
5611	Men's and Boys' Clothing and Furnishings Stores	$4.5
5621	Women's Ready-to-Wear Stores	$4.5
5632	Women's Accessory and Specialty Stores	$3.5
5641	Children's and Infants' Wear Stores	$3.5
5651	Family Clothing Stores	$4.5
5661	Shoe Stores	$4.5
5699	Miscellaneous Apparel and Accessory Stores	$3.5
	Major Group 57-Furniture, Home Furnishings, and Equipment Stores	
5712	Furniture Stores	$3.5
5713	Floor Covering Stores	$3.5
5714	Drapery, Curtain, and Upholstery Stores	$3.5
5719	Miscellaneous Home Furnishing Stores	$3.5
5722	Household Appliance Stores	$4.5
5731	Radio, Television and Electronics Stores	$4.5
5734	Computer and Software Stores	$4.5
5735	Record and Prerecorded Tapes Stores	$4.5
5736	Musical Instrument Stores	$3.5
	Major Group 58-Eating and Drinking Places	
5812	Eating Places (Except Food Services)	$3.5
5812	Food Services	$10.0
5813	Drinking Places (Alcoholic Beverages)	$3.5
	Major Group 59-Miscellaneous Retail	
5912	Drug Stores and Proprietary Stores	$3.5
5921	Liquor Stores	$3.5
5932	Used Merchandise Stores	$3.5
5941	Sporting Goods Stores and Bicycle Shops	$3.5
5942	Book Stores	$3.5
5943	Stationery Stores	$3.5
5944	Jewelry Stores	$3.5
5945	Hobby, Toy, and Game Shops	$3.5
5946	Camera and Photographic Supply Stores	$3.5
5947	Gift, Novelty, and Souvenir Shops	$3.5
5948	Luggage and Leather Goods Stores	$3.5
5949	Sewing, Needlework, and Piece Goods Stores	$3.5
5961	Mail Order Houses	$12.5
5962	Automatic Merchandising Machine Operators	$3.5
5963	Direct Selling Establishments	$3.5
5983	Fuel Oil Dealers	$6.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers	$3.5
5989	Fuel Dealers, N.E.C.	$3.5
5992	Florists	$3.5
5993	Cigar Stores and Stands	$3.5
5994	News Dealers and Newsstands	$3.5
5995	Opticians Stores	$3.5
5999	Miscellaneous Retail Stores, N.E.C.	$3.5

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SIC	DESCRIPTION	SIZE
	DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE[13]	
	Major Group 60-Banking	
6021	National Banks	[14]$100
6022	State Commercial Banks	[14]$100
6029	Commercial Banks, N.E.C.	[14]$100
6035	Savings Institutions, Federally Chartered	[14]$100
6036	Savings Institutions, Not Federally Chartered	[14]$100
	Major Group 63-Insurance	
6331	Fire, Marine, and Casualty Insurance	1,500
	Major Group 64-Insurance Agents, Brokers, and Service	
6411	Insurance Agents, Brokers, and Service	$3.5
	Major Group 65 - Real Estate	
6515	Operators of Residential Mobile Home Sites	$3.5
—	Leasing of Building Space to Federal Government by Owners[15]	$10.0
6531	Real Estate Agents and Managers	[16]$1.0
	DIVISION I—SERVICES	
	Major Group 70-Hotels, Rooming Houses, Camps, and Other Lodging Places	
7011	Hotels, Motels, and Tourist Courts	$3.5
7021	Rooming and Boarding Houses	$3.5
7032	Sporting and Recreational Camps	$3.5
7033	Trailering Parks and Camp Sites for Transients	$3.5
7041	Organization Hotels, and Lodging Houses, on Membership Basis	$3.5
	Major Group 72-Personal Services	
7211	Power Laundries, Family and Commercial	$7.0
7212	Garment Pressing, and Agents for Laundries and Dry Cleaners	$3.5
7213	Linen Supply	$7.0
7215	Coin-operated Laundries and Dry Cleaning	$3.5
7216	Dry Cleaning Plants, Except Rug Cleaning	$2.5
7217	Carpet and Upholstery Cleaning	$2.5
7218	Industrial Launderers	$7.0
7219	Laundry and Garment Services, N.E.C.	$3.5
7221	Photographic Studios, Portrait	$3.5
7231	Beauty Shops	$3.5
7241	Barber Shops	$3.5
7251	Shoe Repair Shops, Shoe Shine Parlors, and Hat Cleaning Shops	$3.5
7261	Funeral Service and Crematories	$3.5
7291	Tax Return Preparation Services	$3.5
7299	Miscellaneous Personal Services	$3.5
	Major Group 73-Business Services	
7311	Advertising Agencies	$3.5
7312	Outdoor Advertising Services	$3.5
7313	Radio, Television, and Publishers' Advertising Representatives	$3.5
7319	Advertising, N.E.C.	$3.5
7322	Adjustment and Collection Services	$3.5
7323	Credit Reporting	$3.5
7331	Direct Mail Advertising Services	$3.5
7334	Photocopying and Duplicating Services	$3.5
7335	Commercial Photography	$3.5
7336	Commercial Art and Graphic Design	$3.5
7338	Stenographic and Court Reporting Services	$3.5
7342	Disinfecting and Exterminating Services	$3.5
7349	Building Maintenance Services, N.E.C.	$8.0
7352	Medical Equipment Rental	$3.5
7353	Heavy Construction and Earthmoving Equipment Rental and Leasing	$3.5
7359	Equipment Rental and Leasing, N.E.C.	$3.5
7361	Employment Agencies	$5.5
7363	Help Supply Services	$3.5
—	Base Maintenance[16]	$13.5
7371	Custom Computer Programming Services	$7.0
7372	Prepackaged Computer Software	$7.0
7373	Computer Integrated System Design	$7.0
7374	Computer Processing and Data Preparation Services	$7.0
7375	Electronic Information Retrieval Services	$7.0
7376	Computer Facilities Management Services	$7.0
7377	Computer Rental and Leasing	$12.5
7378	Computer Maintenance and Repair	$12.5
7379	Computer Related Services, N.E.C.	$12.5
7379	Computer Related Services, N.E.C.	$12.5
7381	Detective, Guard and Armored Car Services	$6.0
7382	Security Systems Services	$6.0
7383	News Syndicates	$3.5
7384	Photofinishing Laboratories	$3.5
7389	Business Services, N.E.C.	$3.5
	Major Group 75-Automotive Repair, Services, and Garages	
7513	Truck Rental and Leasing, Without Drivers	$12.5
7514	Passenger Car Rental, Without Drivers	$12.5
7515	Passenger Car Leasing, Without Drivers	$12.5
7519	Utility Trailer and Recreational Vehicle Rental	$3.5
7521	Automobile Parking	$3.5

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SIC	DESCRIPTION	SIZE
7532	Top, Body, and Upholstery Repair, and Paint Shops	$3.5
7533	Motor Vehicle Exhaust Systems Repair Shops	$3.5
7534	Tire Retreading and Repair Shops	$7.0
7536	Motor Vehicle Glass Replacement Shops	$3.5
7537	Motor Vehicle Transmission Repair Shops	$3.5
7538	General Automotive Repair Shops	$3.5
7539	Automotive Repair Shops, N.E.C.	$3.5
7542	Car Washes	$3.5
7549	Automotive Services, Except Repair and Car Washes	$3.5
	Major Group 76-Miscellaneous Repair Services	
7622	Radio and Television Repair Shops	$3.5
7623	Refrigeration and Air Conditioning Service and Repair Shops	$3.5
7629	Electrical and Electronic Repair Shops, N.E.C.	$3.5
7631	Watch, Clock, and Jewelry Repair	$3.5
7641	Reupholstery and Furniture Repair	$3.5
7692	Welding Repair	$3.5
7694	Armature Rewinding Shops	$3.5
7699	Repair Shops and Related Services, N.E.C.[17]	$3.5
	Major Group 78-Motion Pictures	
7812	Motion Picture Production	$14.5
7819	Services Allied to Motion Picture Production	$14.5
7822	Motion Picture and Tape Distribution	$14.5
7829	Services Allied to Motion Picture Distribution	$3.5
7832	Motion Picture Theaters, Except Drive-in	$3.5
7833	Drive-in Motion Picture Theaters	$3.5
7841	Video Tape Rental	$3.5
	Major Group 79- Amusement and Recreation Services, Except Motion Pictures	
7911	Dance Halls, Studios, and Schools	$3.5
7922	Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services	$3.5
7929	Bands, Orchestras, Actors, and Other Entertainers and Entertainment Groups	$3.5
7933	Bowling Alleys	$3.5
7941	Professional Sports Clubs and Promoters	$3.5
7991	Physical Fitness Facilities	$3.5
7993	Coin-Operated Amusement Devices	$3.5
7996	Amusement Parks	$3.5
7997	Membership Sports and Recreation Clubs	$3.5
7999	Amusement and Recreation Services, N.E.C.	$3.5
	Major Group 80-Health Services	
8011	Offices and Clinics of Doctors of Medicine	$3.5
8021	Offices and Clinics of Dentists	$3.5
8031	Offices of Osteopathic Physicians	$3.5
8041	Offices of Chiropractors	$3.5
8042	Offices of Optometrists	$3.5
8043	Offices of Podiatrists	$3.5
8049	Offices of Health Practitioners, N.E.C.	$3.5
8051	Skilled Nursing Care Facilities	$3.5
8052	Intermediate Health Care Facilities	$3.5
8059	Nursing and Personal Care Facilities, N.E.C.	$3.5
8062	General Medical and Surgical Hospitals	$3.5
8063	Psychiatric Hospitals	$3.5
8069	Specialty Hospitals, Except Psychiatric	$3.5
8071	Medical Laboratories	$3.5
8072	Dental Laboratories	$3.5
8082	Home Health Care Agencies	$3.5
8092	Kidney Dialysis Centers	$3.5
8093	Specialty Outpatient Clinics, N.E.C.	$3.5
8099	Health and Allied Services, N.E.C.	$3.5
	Major Group 81-Legal Services	
8111	Legal Services	$3.5
	Major Group 82-Educational Services	
8211	Elementary and Secondary Schools	$3.5
8221	Colleges and Universities, N.E.C.	$3.5
8222	Junior Colleges	$3.5
8231	Libraries and Information Centers	$3.5
8243	Data Processing Schools	$3.5
8244	Business and Secretarial Schools	$3.5
8249	Vocational Schools, N.E.C.	$3.5
8299	Schools and Educational Services, N.E.C.	$3.5
8299	Flight Training Services	$12.5
	Major Group 83-Social Services	
8322	Individual and Family Social Services	$3.5
8331	Job Training and Related Services	$3.5
8351	Child Day Care Services	$3.5
8361	Residential Care	$3.5
8399	Social Services, N.E.C.	$3.5
	Major Group 84-Museums, Botanical, Zoological Gardens	
8412	Museums and Art Galleries	$3.5
8422	Botanical and Zoological Gardens	$3.5
	Major Group 86-Membership Organizations	
8611	Business Associations	$3.5
8621	Professional Organizations	$3.5
8631	Labor Organizations	$3.5

Notes: Size standards preceded by a dollar sign ($) are in millions of dollars. All others are in number of employees unless specified otherwise.
N.E.C.: Not Elsewhere Classified.

SIC	DESCRIPTION	SIZE
8641	Civic and Social Associations	$3.5
8651	Political Organizations	$3.5
8661	Religious Organizations	$3.5
8699	Membership Organizations, N.E.C.	$3.5
	Major Group 87-Miscellaneous Services	
8711	Engineering Services:	
	Military and Aerospace Equipment and Military Weapons	$13.5
	Marine Engineering and Naval Architecture	$9.0
	Other Engineering Services	$2.5
8712	Architectural Services (Other Than Naval)	$2.5
8713	Surveying Services	$2.5
8721	Accounting, Auditing, and Bookkeeping Services	$4.0
8731	Commercial Physical and Biological Research	[18]500
8732	Commercial Economic, Sociological and Educational Research	$3.5
8733	Noncommercial Research Organizations	$3.5
8734	Testing Laboratories	$3.5
8741	Management Services	$3.5
8742	Management Consulting Services, N.E.C.	$3.5
8743	Public Relations Services	$3.5
8744	Facilities Support Management Services	[19]$3.5
8748	Business Consulting Services, N.E.C.	$3.5
	Major Group 89-Miscellaneous Services	
8999	Services, N.E.C.	$3.5

FOOTNOTES

[1] Reserved.

[2] *SIC-1629:* To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

[3] *SIC Division D--Manufacturing:* "Rebuilding on a factory basis or equivalent." For rebuilding machinery or equipment on a factory basis, use SIC code applicable for new manufactured product. The appropriate size standard is not limited to manufacturers. Ordinary repair services or preservation operations, however, are not considered rebuilding activities.

[4] *SIC-2033:* For purposes of Government procurement for food canning and preserving under SIC-2033, the standard of 500 employees shall be exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

[5] *SIC-2911:* For purposes of Government procurement, the firm may not have more than 1,500 employees, nor may it have more than 50,000 barrels per day capacity. This capacity may be measured in terms of either crude oil or bona fide feedstocks or both, but the sum total of the various petroleum-based inputs in the process may not exceed 50,000 barrels. In addition to the direct owned capacity of the concern in question, counted capacity will include any leased facilities or any facilities made available to the concern under an arrangement such as (but not limited to) an exchange agreement or a throughput, or other form, or processing agreement (whereby another party processes the concern's own crude or feedstocks). Such an arrangement would have the same effect as though such facilities had been leased, and this would have to be included in the concern's own capacity. The total product to be delivered in the performance of the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

[6] *SIC-3011:* For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112, provided that (1) the value of tires within Census Classification Codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal products which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

[7] *SIC-4212:* The Component "Garbage and Refuse, Collecting and Transporting, Without Disposal" shall have a size standard of $6.0 million. This is the same size standard as SIC-4953, Refuse Systems.

[8] *Offshore Marine Services (Major Groups 44 and 45):* The applicable size standard shall be $14 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production, or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

Notes: Size standards preceded by a dollar sign ($) are in millions of dollars. All others are in number of employees unless specified otherwise.
N.E.C.: Not Elsewhere Classified.

[9] *SIC-4512, 4513, and 4522:* Includes passenger or cargo transportation requiring the use of one or more helicopters or fixed-wing aircraft. For other services requiring the use of one or more helicopters or fixed-wing aircraft, not involving passenger or cargo transportation, but in SIC 4512, 4513, and 4522, a size standard of $6.5 million shall apply. This does not include offshore marine transportation services as defined in footnote [8].

[10] *SIC-4724:* As measured by commissions only, in millions of dollars.

[11] *SIC-4953:* "Garbage and Refuse, Collecting and Transportation: Without Disposal," a component of SIC-4212, has the same size standard as SIC-4953.

[12] *SIC-5599:* For retail firms whose principal line of business is the retail sale of aircraft, a $5 million size standard shall apply.

[13] *Most industries in Division H* — Finance, Insurance, and Real Estate — are excluded from SBA assistance.

[14] *SIC-6021, 6022, 6029, 6035, 6036:* Millions of dollars, as measured by total assets.

[15] *Leasing of building space to the Federal Government by owners* —For the purpose of Government procurement, a size standard of $10 million in gross receipts is established for owners of building space that is leased to the Federal Government. The standard for these procurements shall apply to the owner of the property and not to those acting as an agent for the owner. There is no size standard concerning the agent.

[16] *If one of the activities in base maintenance, as defined in SIC-7363,* can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base maintenance" constitutes three or more separate activities. The activities may be either service or special trade construction related activities. As services, these activities must each be in a separate industry. These activities may include, but are not limited to such separate maintenance activities as Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service, the Safety Engineering Service, Messenger Service, and Grounds Maintenance and Landscaping Service. If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpeting, etc.), all such specialized trade construction activities will be considered a single activity, which is Base Housing Maintenance. This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

[17] *SIC-3728, 7699:* Contracts for this rebuilding or overhaul of aircraft ground support equipment on a contract basis will be classified under SIC-3728.

[18] *SIC-8731:* For research and development contracts the delivery of a manufactured product, the size standard to use is that of the manufacturing industry in which the specific product is classified.

Research and Development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory tesing. For purposes of the SBIR program only, a different definition has been established by law. See Part 121.7.

[19] *Facilities Management, a component of Facilities Support Management Services (SIC-8744), has the following definition:*

Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to secretarial services, typists, telephone answering, reproduction, or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[20] *SIC-4911:* Measured in millions of megawatt hours.

(The next page is 19-7)

BILLING CODE 4910-13-C

19.501 [Amended]

12. Section 19.501 is amended by removing in paragraph (f)(1) the figure "10,000" and inserting in its place the figure "$25,000".

19.508 [Amended]

13. Section 19.508 is amended by removing in paragraph (a)(2) the figure "$10,000" and inserting in its place the figure "$25,000".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 52.215–26 is revised as follows:

52.215–26 Integrity of Unit Prices.

As prescribed in 15.812–2, insert the following clause:

Integrity of Unit Prices (Apr 1987)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base costs (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The requirement in paragraph (a) of this clause does not apply to any Department of Defense (DoD) or National Aeronautics and Space Administration (NASA) contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public. A price is based on a catalog or market price only if the item being purchased is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.

(c) The Offeror/Contractor shall also identify those supplies which it will not manufacture, or to which it will not contribute significant value, when requested by the Contracting Officer. However, for DoD and NASA contracts, the information shall not be required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

(d) The Contractor shall insert the substance of this clause, less paragraph (c), in all subcontracts.

(End of clause)

Alternate I (APR 1987). As prescribed in 15.812–2(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value. For DoD and NASA contracts, this information is not required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

52.219–4 [Amended]

15. Section 52.219–4 is amended by inserting a colon in the introductory text following the word "offers" and removing the remainder of the sentence.

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BILLING CODE 6820–61–M

Federal Register

Tuesday
June 9, 1987

Part VII

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 764 and 769

State and Federal Processes for Designating Lands Unsuitable for Surface Coal Mining Operations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 764 and 769

State and Federal Processes for Designating Lands Unsuitable for Surface Coal Mining Operations

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) proposes to amend existing permanent program rules which establish the process for petitioning the regulatory authority to designate specified areas as unsuitable for surface coal mining operations. The regulations are being amended to eliminate the provision that allows the regulatory authority and OSMRE to suspend processing a petition. The proposed rule would also eliminate the provision for a public hearing on the completeness of a petition in the State process and allow up to 60 days for the completeness review in the Federal process. The rules are being proposed in response to a decision by the U.S. District Court for the District of Columbia.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rules until 4:00 p.m. Eastern time, August 18, 1987.

Public Hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Knoxville, Tennessee, at 9:30 a.m. local time on August 11, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington, where Federal regulatory programs are in effect, at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 4:00 p.m. Eastern time on July 9, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

Public hearings: Individuals wishing to attend any hearing should call the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

Request for public hearings: Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT".**

ADDRESSES: *Written comments: Hand-deliver* to the Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5131, 1100 L Street, NW., Washington, DC; or *mail* to the Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, Main Interior Building, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

FOR FURTHER INFORMATION CONTACT: Catherine Roy, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone 202–343–5143 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rules
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**).

Any person interested in participating at a hearing at a particular location should inform Ms. Roy (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired location by 4:00 p.m. Eastern time July 9, 1987. If no one has notified Ms. Roy of an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

Section 522 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, establishes a process through which mining may be limited or prohibited where other values are found to be more important than mining and specifies certain areas as unsuitable for mining. Rules implementing this section of the Act were promulgated as part of the permanent regulatory program for surface coal mining operations on March 13, 1979 (44 FR 14901). These rules provide for the designation of lands as unsuitable for all or certain types of surface coal mining operations, for terminating such designations, for identifying lands on which surface coal mining operations are limited or prohibited under section 522(e) of SMCRA, and for implementing those limits and prohibitions. The State processes for submitting and reviewing petitions to have areas designated unsuitable are found in 30 CFR Part 764. Procedures for such petitions for Federal lands are found in 30 CFR Part 769.

OSMRE revised 30 CFR Part 764 and 30 CFR Part 769 on September 14, 1983 (48 FR 41312). Among the 1983 changes was a provision to allow the regulatory authority to suspend the processing of an unsuitability petition if certain conditions exist. In the State processes, the regulatory authority was allowed to suspend petitions where there was found to be no real or foreseeable potential for surface coal mining to occur. This potential was defined as "likely to be subject to leasing or mining activity within 5 years" (30 CFR 764.15(a)(3)).

For Federal lands, a "ripeness" test was added, and the Director was allowed to suspend a petition for lack of ripeness. Ripe was defined in 30 CFR 769.14(a)(3) as meaning lands that are (1) subject to a Federal coal lease, (2) included in a tract for which land use planning has been completed and which

tract is available for further consideration for Federal coal leasing, (3) not required to be leased because the mineral rights are not owned by the United States or are owned by the Tennessee Valley Authority, or (4) over unleased Federal coal and subject to surface disturbance from neighboring surface coal mining operations.

The State process for unsuitability petitions was also amended in 1983 by extending the review period from 30 days to 60 days for the regulatory authority to determine if the petition is complete (30 CFR 764.15(a)(1)). A provision was also added to allow the regulatory authority to hold a hearing or solicit written comments on the completeness of petitions.

District Court Decisions

The petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations (and for termination of previous designations) was challenged in the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation*, C.A. No. 79–1144). In a decision dated July 15, 1985, the court upheld the Federal petition process; however, it noted that the Secretary had failed to justify the procedural differences in the State and Federal petition processes, specifically, the differences in the length of time for the completeness review and the absence in the Federal procedures of the possibility of a hearing or other form of public participation during this review, as is provided in the regulations that apply to State programs.

In the same order, the court remanded the portions of the rule allowing suspension of processing unsuitability petitions. The court found §§ 764.15(a) and 769.14(a)(3) inconsistent with law, and found that the Secretary had provided no rational basis or justification in the preamble to 30 CFR 764.15(a)(3).

Before initiating this rulemaking, OSMRE prepared a background briefing paper on the issues being considered, including the history described above and the options available to the agency. This paper was sent to several State, industry and environmental groups for comment. OSMRE received comments from six groups: five State regulatory authorities and one environmental group. See next section for further discussion.

III. Discussion of Proposed Rules

In response to the court order, OSMRE is proposing two changes for 30 CFR Part 764 and two changes for 30 CFR Part 769. These parts detail procedures for processing petitions to designate areas unsuitable for surface coal mining operations by States and on Federal lands, respectively. Because the Federal programs incorporate Part 764 by reference, Part 764 also applies to the petition process on all nonfederal lands in the ten Federal program states.

30 CFR Part 764

The proposed change would delete 30 CFR 764.15 (a)(3) and (a)(8), which allow the regulatory authority to suspend the processing of an unsuitability petition if certain conditions exist. Under this proposal, the regulatory authorities would process petitions for unsuitability designations without consideration of foreseeable plans for mining operations. State regulatory authorities have commented to OSMRE that the existing rule is difficult to implement. They stated that it is not always possible for the regulatory authority to know of industry plans to commence surface coal mining operations on specific areas five years in advance, particularly where such operations are typically small and plans likely to be developed (and known to the regulatory authority) in less than 5 years' time. OSMRE is therefore proposing to drop this provision from the regulations. In addition, 30 CFR 764.15 would be renumbered to accommodate the paragraphs removed.

In the comments on the background briefing paper, one State regulatory authority urged OSMRE to continue to allow rejection of petitions that are frivolous. OSMRE has not considered deleting this provision, and any State regulatory authority may continue to reject such petitions under the existing regulations.

The other proposed change would remove the option of a public hearing on the completeness review by deleting paragraph 764.15(b)(2). State regulatory authorities have commented to OSMRE that the opportunity for public comment is more appropriate at the stage in which the substantive issues of the petition are considered. The completeness review is primarily an administrative review to determine if all the requirements for a petition, such as petitioner's name, address, and interest in the area covered by the petition, are met. OSMRE proposes to delete the provision for the hearing during the completeness review; however, under SMCRA section 522(a)(4), the public hearing on the merits of the petition must be retained.

30 CFR Part 769

The proposed rule would amend 30 CFR Part 769 by deleting the concept of ripeness by removing 30 CFR 769.14(a)(3), 30 CFR 769.14(b)(2), and 30 CFR 769.14(h). Petitions for unsuitability designations on Federal lands would be processed without consideration of the possibility of mining activity in the near future. Additionally, 30 CFR 769.14(a)(1) and 30 CFR 769.14(c) would be amended to delete the word "ripe for further processing" and "ripe", respectively. Sections of paragraphs (a) and (b) would be renumbered to account for the removal of the rules relating to ripeness.

Another proposal would amend 30 CFR 769.14(a)(1) to change the period of the completeness review to 60 days. The existing regulations provide for a 60-day period for the State procedures and a 30-day period for the Federal determination. This proposal would make the process for Federal lands consistent with the State processes and avoid the confusion caused by the differences in the two processes.

The proposed rule would also correct a reference made in 769.14(a)(4) to regulations promulgated by the Bureau of Land Management. These regulations (43 CFR Part 3420) were renumbered in 1982, and the incorrect citation was inadvertently retained in OSMRE's rules.

Effect in Federal Program States

Part 764 of the proposed rule would apply through cross-referencing to the following Federal program States: Georgia, Idaho, Massachussetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

IV. Procedural Matters

Federal Paperwork Reduction Act

The proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The Department of the Interior (DOI) has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule. The rule would not cause major economic impacts and would have no adverse effects on competition,

employment, investment, productivity, or innovation, or on the ability of U.S. enterprises to compete in domestic or export markets.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in the preceding paragraph.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA is on file in the OSMRE Administrative Record at the address provided in **ADDRESSES**. An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Author

The author of this regulation is Catherine Roy, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; telephone: (202) 343-5143 (Commercial or FTS).

List of Subjects

30 CFR Part 764

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 769

Administrative practice and procedure, Public lands, Reporting and recordkeeping requirements, Surface mining, Underground mining.

For the reasons set forth in this preamble, it is proposed to amend 30 CFR Parts 764 and 769 as set forth below.

Dated: May 21, 1987.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

1. The authority citation for Part 764 continues to read as follows:

Authority: Secs. 102, 201, 503, 510 and 522 of Pub. L. 95-87, 91 Stat. 448, 449, 470, 480 and 507 (30 U.S.C. 1202, 1211, 1253, 1260 and 1272).

§ 764.15 [Amended]

2. Section 764.15 is amended by removing paragraphs (a)(3), (a)(8), and (b)(2), by redesignating paragraphs (a)(4) through (a)(7) as (a)(3) through (a)(6) respectively, and by redesignating paragraph (b)(3) as (b)(2).

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

3. The authority citation for Part 769 continues to read as follows:

Authority: Secs. 102, 201, 501, 510, 517, 522 and 523 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 480, 498, 507, 510 (30 U.S.C. 1202, 1211, 1251, 1260, 1267, 1272 and 1273).

4. Section 769.14 is amended by revising paragraphs (a)(1), (a)(4), and (c) to read as follows:

§ 769.14 Initial processing, recording, and notification requirements.

(a)(1) Within 60 days of receipt of a petition, OSMRE shall determine whether the petition is complete and not frivolous. OSMRE may request other supplementary information which is readily available to be provided by the petitioner. Any request for such supplementary information from the petitioner shall not affect OSMRE's determination that the petition is complete for further processing.

* * * * *

(4) *Frivolous*, for a designation or termination petition, means that: (i) The allegations of harm lack serious merit; or (ii) available information shows that no "mineable" coal resources exist in the petitioned area or that the petitioned area is not or could not be subject to related surface operations and surface impacts incident to an underground coal mine or an adjoining surface mine (mineable coal is coal with development potential as mapped or reported by the Bureau of Land Management under 43 CFR 3420.1-4(e)(1); and privately owned coal under land owned by the United States).

* * * * *

(c) When the Director finds that the petition is complete and not frivolous, he or she shall initiate the petition review and so advise the petitioner via certified mail.

* * * * *

5. Section 769.14 is further amended by removing paragraphs (a)(3), (b)(2), and (h), and by redesignating paragraphs (a)(4) as (a)(3) and (b)(1) as (b).

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federal register

Tuesday
June 9, 1987

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 159
Charges for Use of Metropolitan Washington Airports; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 159

[Docket No. 25204; Amdt. No. 159-31]

Charges for Use of Metropolitan Washington Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Final Rule adjusts the fees and charges for use of Washington National and Washington Dulles International Airports for general aviation operators and for air carriers that do not have a contract for use of the Airports. General aviation users will pay landing fees at the same rate as the contract air carriers. The exemption from landing fees at Dulles for aircraft under 3,500 pounds will be eliminated and a minimum landing fee of $4.00 imposed. Non-contract air carriers will pay service charges and a differential landing fee of 125 percent of the contract carrier fee.

DATE: Effective date of this Amendment is June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Faggen, Legal Counsel, AMA-7, Metropolitan Washington Airports, Washington National Airport, Hangar 9, Washington, DC 20001, Telephone: (703) 685-8115.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1987, interested persons were invited to comment on a proposal to change the regulation which prescribes landing fees at Washington National and Washington Dulles International Airports (Notice 87-1, 52 FR 7446; March 11, 1987). All persons were given an opportunity to participate in the rulemaking by submitting such written data, views or arguments as they desired. Comments have been received and consideration has been given to all of the communications received by FAA on Notice 87-1.

Washington National Airport and Washington Dulles International Airport (the "Airports") are owned and presently operated by the Federal Government. The Secretary of Transportation has control over and responsibility for the care, operation, maintenance, and protection of the Airports and has the authority to issue rules and regulations necessary for these purposes. This responsibility has been delegated to the Administrator of the Federal Aviation Administration (FAA).

As proprietor of the Airports, FAA establishes the terms and conditions for commercial activities occurring at the Airports. The FAA collects fees and charges from aircraft operators to recover the costs associated with the airfields. It is common for the scheduled carriers to have contracts with FAA which prescribe the formula for calculating their landing fees. Users, including general aviation, who do not have a contractually prescribed landing fee pay the fees prescribed by the regulations in § 159.181 (14 CFR 159.181).

On October 18, 1986, the "Metropolitan Washington Airports Act of 1986" (the "Act") became effective. The Act authorized a long-term lease of the Airports from the Federal Government to a regional authority, the Metropolitan Washington Airports Authority. The Act contains a provision relating to the landing fees of general aviation aircraft which warrants immediate regulatory action on the part of the FAA. Section 6005(c)(10) of the Act provides:

> The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft except that the Airports Authority may require a minimum landing fee not in excess of the minimum landing fee for aircraft weighing 12,500 pounds.

In the the current FAA contracts with the air carriers, which expire in December 1989, the carriers have agreed to pay a landing fee for each 1,000 pounds of the maximum authorized landing weight of their aircraft. The fee is calculated to enable the Government to recover the net cost for the landing areas at both Airports. Net costs are determined by totalling the Government's cost for maintenance, operation, utilities, interest and depreciation, fire and crash rescue services, police, and certain other administrative costs allocable to the landing area. From this total, FAA subtracts the revenues from general aviation landing fees, some commissions from the fixed based operator (the private company that services and fuels general aviation), and fees from non-contracting air carriers. The excess costs over revenues constitute the net costs to be recovered in the landing fee. These costs, divided by the estimated total landing weight of the air carrier aircraft for the calendar year, yields the fee per pound of landed weight. During each year of the Government's contract with the air carriers, the fee is adjusted to reflect the current costs less current revenues allocated to the landing area. The current (1987) air carrier fee at the Airports is $.5695 per 1,000 pounds of landing weight.

The landing fees for general aviation were last adjusted in 1968. The current fees at National Airport are only $0.12 per 1,000 pounds for turbo-propeller and reciprocating engine aircraft and $0.30 per 1,000 pounds for turbo-jet aircraft. There is a $4.00 minimum fee at National Airport for all aircraft, excluding helicopters. At Dulles Airport, the basic landing fee is $0.25 per 1,000 pounds for turbo-jet and reciprocating engine aircraft. There is a $0.75 minimum fee, but there is no fee for non-commercial aircraft weighing less than 3,500 pounds, which accounts for approximately 25 percent of the general aviation aircraft landing at Dulles.

The Act provides that the FAA's regulations will become regulations of the new Airport Authority. Thereafter, the Authority may amend these rules and adopt new ones in accordance with its procedures. The FAA has concluded that its regulation of landing fees must be adjusted to conform to the Act's requirements so that on the effective date of the transfer, general aviation will pay for landing at the Airports on the same basis, i.e., cost per thousand pounds, and at the same rate as the air carrier users pay. This final rule will accomplish this. It will also impose a $4.00 minimum landing fee on general aviation users at Dulles Airport. The minimum fees at both airports will be applicable to helicopters. This rule as adopted by FAA will transfer to the new Authority when its lease becomes effective on or about June 7, 1987.

FAA also proposed to modify the landing fee for those carriers that do not have contracts for regular use of the airports. The signatory carriers (defined herein as carriers operating under Parts 121, 127, 129, or providing scheduled or non-scheduled operations under Part 135 that have signed contracts with the Airports) have agreed to pay fees to defray the costs of the Airports' operation. At both Airports signatory carriers pay security fees for pre-boarding security. At Dulles, the carriers also pay fees for the use of the Federal Inspection Service area where United States Customs Service inspections are performed. Also at Dulles, the carriers pay a common use facility fee to pay for the cost of providing the large common hold rooms, baggage claim areas and other baggage handling and sky-cap facilities. A portion of the cost of the mobile lounges to transport passengers between the main terminal and the remote terminals or aircraft is also

recovered through the common use facility fee. Currently, the signatory carriers each pay a fixed fee of $3,395.00 a month plus a fee per passenger.

In addition to the fees, the signatory carriers pay rent for the space that they lease for their exclusive use. They have agreed to be responsible for considerable maintenance of Government premises on the Airports including portions of the airfield, the terminals, and the hangars at National Airport. In addition to prescribing significant financial and maintenance responsibilities for the carriers, the contracts advance airport policies regarding the accommodation of new entrant carriers. The signatory carriers who lease space on the Airports have agreed to a process that may require them to accommodate other carriers, including new entrant carriers, in their leased space, if the Director of the Airports determines that it is necessary.

Non-signatory carriers and other irregular users use the same facilities as signatory carriers at the Airports. The non-signatory carriers pay fees to the Airports in accordance with the regulation as opposed to a contract. The existing regulation provides for a landing fee for non-signatory carriers of $0.25 per 1,000 pounds at Dulles and $0.30 per 1,000 pounds at National. These fees are substantially below that which the signatory carriers are obligated to pay according to their contracts.

FAA proposed to change its regulation of fees to bring the fees for non-signatory carriers into line with the other fees charged to users who contract to support the Airports. The final rule will require non-signatory carriers to pay 125 percent of the signatory carrier landing fee. The differential would be in lieu of facility charges which are impractical to impose on irregular users. It also recognizes the additional administrative costs associated with non-signatory carriers who operate at the Airports.

Comments

Six comments were received on Notice 87–1. The comments were from the staff of the Federal Trade Commission (FTC), the Air Transport Association, Aeroflot, the Federal Republic of Germany, Butler Aviation and U.S. Jet, Inc. The FTC's Bureau's of Economic Competition and Consumer Protection presented general concepts in support of a theory of efficient pricing of Airport services. Under their economic theory, the Airports' pricing should reflect the marginal cost that the provision of airport services imposes on society. This theory suggests that in addition to the cost of providing physical facilities, there is a cost of congestion that an aircraft using the airport imposes on passengers on other flights and a cost of noise imposed on residents living near the airport. If these costs are recognized, the fees for operating during congested peak demand times of the day should be higher than off-peak times. Also, the fees may vary with the amount of noise made by an aircraft. In theory, such pricing would have salutary effects of moving some aircraft operations from high cost to low cost operating times, that is, from peak to off-peak periods of congestion or periods of lower noise sensitivity.

In response, FAA will neither embrace nor reject the efficient pricing theory espoused by the FTC staff. The imposition of landing fees at the Airports based on such a theory is beyond the scope of the present rulemaking. The present rule is intended for the limited purpose of conforming the Airports' existing landing fees with the requirements of the Act. The Act requires that general aviation landing fees be paid at the same rate as air carrier landing fees.

Further, air carrier landing fees at the Airports are fixed by contracts which do not expire until the end of 1989. Therefore, FAA does not have the ability to pursue economic pricing theories such as the one proposed by the FTC staff for either the contract carriers or general aviation. The merits of this comment are more appropriately addressed by the Authority when the air carrier agreements are renegotiated.

The Air Transport Association (ATA) expressed its support for the overall objective of the proposed rule and urged the FAA to adjust the non-signatory, itinerant and general aviation user fees as proposed. ATA views this rule as a "step toward the desirable objective of cost-relatedness of fees and charges, and the recovery by the airport of a 'fair share' of costs from the variety of airport users." ATA did urge the Metropolitan Washington Airports Authority to examine the minimum landing fee of $4 and suggested that the minimum may not be adequate to recover the cost of services and facilities provided.

Under the Metropolitan Washington Airports Act, the minimum landing fee on general aviation aircraft cannot exceed the fee that would be imposed on a 12,500 pound aircraft. While this fee would be in excess of $4 (approximately $6) FAA has elected not to set the minimum fee at the maximum permitted by law. The change to a weight-base methods to calculate fees produces a fee increase for general aviation users. Furthermore, the imposition of a $4 minimum at Dulles Airport will also be an increase for some of the smaller aircraft operating at that airport. As stated in the Notice, a future change by the Authority in the minimum landing fee to the level permitted by law may be appropriate if it is determined by the Authority that the cost of providing basic services at National and Dulles to light aircraft is not being recovered by the weight-based landing fee and by the current minimums.

A comment was received from Aeroflot, the Soviet Airline. Aeroflot is a non-signatory carrier at Dulles Airport. Aeroflot did not object to the proposed rule, but noted that Aeroflot would benefit from keeping its non-signatory status. FAA views Aeroflot's comments as supporting the proposed rule. The determination of whether Aeroflot's status is properly that of a signatory carrier or non-signatory carrier is not a regulatory matter. This will be determined by discussions between the carrier and airport management.

The Federal Republic of Germany's Armed Forces Administrative Agency, which operates aircraft on official missions of the German Air Force, expressed concern that the proposed rule would impose a landing fee on German Air Force aircraft landing at Dulles. This is not the situation. The rule will not impose landing fees on public aircraft. Public aircraft are defined by FAA as "aircraft used only in the service of a government, or a political subdivision. It does not include any government-owned aircraft engaged in carrying persons or property for commercial purposes." 14 CFR 1.1. This definition is added to the landing fee rule for continuity after the transfer to the Authority. German Air Force aircraft have been treated as public aircraft in the past and have not paid a landing fee at the Airports. They will continue to be treated as public aircraft under the new regulation.

U.S. Jet, Inc., a provider of on-demand Part 135 service at National Airport, objected to the distinction proposed in the Notice between scheduled and non-scheduled Part 135 operators. U.S. Jet is seeking to become a signatory carrier at the Airports. As originally proposed, only scheduled Part 135 operators could become signatory air carriers; non-scheduled Part 135 operations would remain general aviation for contract and landing fee purposes. This was consistent with the historic operation at the Airports. Non-scheduled Part 135 operators, like U.S. Jet, Inc., often referred to as "air taxis," generally

operate aircraft more typical of general aviation than scheduled carriers. Also, at National, non-scheduled Part 135 operators have not been considered to be air carriers or commuters under the high density rule, 14 CFR 93.123, *et seq.*, for obtaining and operating slots. Nevertheless, FAA sees no reason to enact a regulation which would preclude a non-scheduled Part 135 operator from reaching an agreement with airport managment to be a signatory carrier. FAA makes no judgment on the particular contractual relationship between the Metropolitan Washington Airports and U.S. Jet. The matter is to be resolved by airport managment and not as an FAA regulatory matter.

U.S. Jet objected to paying fees as a non-signatory carrier if it is not permitted to become a signatory carrier. U.S. Jet's premise is not correct. The definition of a non-signatory carrier, which was in the Notice and is retained in the final rule, does not encompass non-scheduled Part 135 operators. They will continue to be treated as general aviation if they do not reach an agreement with the Airport to be signatory carriers. The non-signatory carrier fee differential is aimed at operators of large aircraft and Part 135 operators that are scheduled. Regularly scheduled operators are encouraged to become signatory carriers at the Airport. Non-scheduled Part 135 operators tend to operate smaller aircraft and function more like general aviation. It would be appropriate for the Authority to reconsider this classification, particularly if non-scheduled Part 135 operators impose costs on the Airports that are not adequately recovered by the general aviation landing fee.

Finally, it was suggested that the landing fees, once calculated, be rounded to the nearest $0.25. FAA has elected not to adopt this suggestion.

It should be noted that FAA terminology is used in the rule. For instance, the rule refers to the Director of the Metropolitan Washington Airports, an FAA title. After the transfer of the Airports, the Airports Authority, of course, may use different terminology and titles.

Regulatory Evaluation

The final rule is not expected to have any significant impact because it will not impose any significant additional requirements on the users of the airports. A minimal economic impact will befall operation of general aviation aircraft at the airports and there will be a relatively minimal impact on non-signatory carriers who use the airports. A minimal economic benefit will accrue to the signatory carriers because the increased fees from general aviation and the non-signatory carriers will pay a larger percentage of the costs in the landing fee cost center thereby reducing the total costs to be paid by the signatory carriers. The rule is not expected to have any effect on passengers. For this reason, it has been determined that the economic impact of this amendment is so minimal that a full Regulatory Evaluation is not warranted.

The various regulations in the final rule will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to ensure, among other things, that small entities are not disproportionately affected by Government regulations. Small entities affected by the final rule are likely to be itinerant non-scheduled Part 135 air taxis who use the Airports from time to time, non-scheduled air taxi operators who are based at the Airports and non-scheduled operators of large aircraft. The rule will not require any change in the operations of these companies as currently conducted. No additional record-keeping requirements would be imposed. The air taxi operators are considered general aviation for landing fee purposes. The increase may have a significant impact on one or more of the air taxis that are based at the Airports, but it will not have a significant impact on a substantial number of small entities which operate aircraft, including large aircraft. The impact on the affected small entities would be substantially less than the threshold for significant impact under agency guidelines. Therefore, under the criteria of the Regulatory Flexibility Act, the final rule will not have a significant impact on a substantial number of small entities.

Conclusions

The final rule is not expected to impose any significant economic impact because it will not impose significant additional cost requirements on persons complying with the rule nor will it impose major changes in the activities it addresses. Therefore, the FAA has determined that this proposed amendment involves a regulation which is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures. (44 FR 1034; February 26, 1979). For the same reasons, it is certified that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because the cost of this amendment is so minimal it does not warrant a full regulatory evaluation.

Reason for Immediate Adoption

The Administrative Procedure Act allows a rule to be made effective immediately for good cause. Because of the need to modify the landing fees for general aviation users in accordance with the Metropolitan Washington Airports Act of 1986 so that the new fees are in effect on the date of the transfer of the Airports to the new Authority, good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 159

Washington National Airport, Washington Dulles International Airport fees.

The Amendment

Accordingly, Part 159 of the Federal Aviation Regulations (14 CFR Part 159) is amended as follows:

PART 159—[AMENDED]

1. The authority citation of Part 159 is revised to read as follows:

Authority: 49 U.S.C. 2402 and 2424; The Metropolitan Washington Airports Act of 1986, Pub. L. 99-591, October 30, 1986.

2. By revising § 159.181 to read as follows:

§ 159.181 Landing fees.

(a) Except as provided in paragraph (b) of this section, the charges for each landing of an aircraft at Washington National Airport or Washington Dulles International Airport are as follows:

(1) *Signatory carriers.* Unless the carrier has a contract with the Airport management which provides otherwise, the carrier shall pay a landing fee for each of its aircraft that comes to a full stop at the Airport. The fee shall be paid at a rate for each 1,000 pounds or part thereof the maximum authorized landing weight of the aircraft permitted at the Airport. The rate per 1,000 pounds will be calculated by the Director, Metropolitan Washington Airports to recover the net direct and allocated costs of the airfield cost center, including utilities. The fee shall be calculated annually and adjusted for the underrecovery or the overrecovery of the prior year's costs.

(2) *Non-signatory carriers.* Each non-signatory carrier shall pay a landing fee equal to 125 percent of the current fee applicable to signatory carriers under paragraph (a) of this section.

(3) *Other operators.* All other users of the Airport shall pay landing fees on the

same basis and at the same rate as the signatory carriers except that a minimum landing fee shall be applicable as provided in paragraph (a)(4) of this section.

(4) The minimum landing charge at Washington National Airport and Washington Dulles International Airport for all aircraft, including helicopters, shall be $4.00.

(b) There is no landing charge under this section for the following:

(1) Public aircraft.

(2) Aircraft departing from the Airport that are compelled to land at either Airport for safety reasons without landing at any other airport.

(3) Aircraft operations for which the Director, Metropolitan Washington Airports determines that a charge should not be imposed.

3. By revising § 159.183 as follows:

§ 159.183 Service fees.

Each carrier or general aviation operator which uses the following services shall pay to the Director, Metropolitan Washington Airports the fee established by the Airports for the service as follows unless the carrier or operator has a contract with the Airport which prescribes a different fee:

(a) Common use facilities—for use of the holdroom areas, baggage claim areas, baggage roadways, and porter facilities: The landing fee prescribed by § 159.181.

(b) Mobile lounge fees per trip: $50.00.

(c) Federal Inspection Service fees (established annually) for use of the area where the Federal Inspection Services are performed: The fee per passenger paid by the signatory carriers.

4. By adding new § 159.184 as follows:

§ 159.184 Definitions.

For the purpose of §§ 159.181 and 159.183:

(a) A "signatory carrier" is a carrier operating under Part 121, Part 127, Part 129, or providing scheduled or non-scheduled operations under Part 135, that has entered into a contract with the Airport specifying the fees and charges for use of the Airport; and

(b) A "non-signatory carrier" is a carrier operating under Part 121, Part 127, Part 129, or providing scheduled operations under Part 135, that does not have a contract with the Airport specifying the fees and charges for use of the Airport.

(c) Public aircraft means aircraft used only in the service of a government or a political subdivision. It does not include any government-owned aircraft engaged in carrying persons or property for commercial purposes.

5. By revising § 159.185 as follows:

§ 159.185 Payment for services.

(a) Unless other arrangements for payment have been made with the approval of the airport management, general aviation landing fees shall be paid to the fixed base operator at the Airport and a carrier shall report its weight to an authorized ground handler at the Airport.

(b) Unless satisfactory credit arrangements have been made, a person who has used Airport facilities, or who owes for storage, supplies, repairs, or other services by the Airports, must pay for them before takeoff.

Issued in Washington, DC, on June 4, 1987.

Donald D. Engen,

Administrator.

[FR Doc. 87-13063 Filed 6-4-87; 3:48 pm]

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federal register

Tuesday
June 9, 1987

Part IX

Department of Health and Human Services

Office of Human Development Services

American Indian and Native Hawaiian Social and Economic Development Projects; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13612-881]

American Indian and Native Hawaiian Social and Economic Development Projects; Availability of Financial Assistance

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), Department of Health and Human Services.

ACTION: Announcement of availability of competitive financial assistance for American Indian and Native Hawaiian social and economic development projects.

DATES: The closing dates for receipt of applications are October 16, 1987, February 5, 1988 and May 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lucille Dawson (202) 245-7727 or Sharon McCully (202) 245-7714, Administration for Native Americans, Office of Human Development Services, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, DC 20201.

A. Introduction and Program Purpose

The purpose of this program announcement is to announce the availability of financial assistance to promote self-sufficiency for Indian Tribes and American Indian and Native Hawaiian groups through support of local governance, as well as social and economic development projects. Funds will be awarded under section 803 of the Native American Programs Act of 1974, Pub. L. 93-644, 88 Stat. 2324, 42 U.S.C. 2991b.

Proposed projects will be reviewed on a competitive basis against the evaluation criteria in this announcement.

The purpose of the financial assistance provided by the Administration for Native Americans (ANA) under the Native American Programs Act (the Act) is to promote social and economic self-sufficiency for American Indians, Alaska Natives, and Native Hawaiians.

ANA believes that responsibility for achieving self-sufficiency rests with the governing bodies of Indian tribes and in the leadership of Native American groups. The development of self-sufficiency requires strengthening governmental responsibilities, economic progress, and improvement of social systems which protect and enhance the health and well-being of individuals, families and communities.

Achievement of self-sufficiency is based on the community's ability to plan, organize, and direct resources in a comprehensive manner to achieve long-range community goals. ANA bases its program and policy initiatives on the following three program goals:

(1) Governance: To assist tribal governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.

(2) Economic Development: To foster the development of stable, diversified local economies and economic activities which will provide jobs, promote economic well-being, and reduce dependency on public funds and social services.

(3) Social Development: To support local access to, control of, and coordination of services and programs which safeguard the health and well-being of people, and which are essential to a thriving and self-sufficient community.

To accomplish these goals, ANA supports tribal governments and other Native American organizations in the development and implementation of community-based, long-term governance and social and economic development strategies (SEDS) aimed at promoting the self-sufficiency of their own communities. This approach is based on two fundamental principles:

(1) The local community and its leadership are responsible for determining their own goals, setting priorities, and planning and implementing programs aimed at achieving those goals; the unique mix of socio-economic, political, and cultural factors involved in each community makes such self-determination necessary, the local community is in the best position to apply its own cultural, political, and socio-economic values in deciding on long-term strategies and programs.

(2) Economic and social development are interrelated, and development in one area shsould be balanced with development in the other in order to enhance self-sufficiency. Without a careful balance of the two, the community's development efforts may be jeopardized. Expansion of social services, without providing opportunities for employment and economic development, may lead to greater dependency. Conversely, inadequate social services can seriously impede productivity and economic development.

B. Proposed Projects to be Funded

The fundamental task which Native American communities face is developing enduring social and economic strategies in keeping with local goals, resources, and cultural values. ANA is interested in assisting local communities in the implementation of projects that are a part of long-range strategies to achieve social and economic self-sufficiency. ANA expects its applicants to have undertaken a long-range planning process that addresses the community's development and encourages social and economic growth for the community. Such long-range planning must consider the maximum use of available resources, directing those resources at opportunities and addressing issues that hinder progress.

ANA encourages applicants to consider innovative approaches to achieve the specific governance and social and economic goals of the community, and to use non-ANA resources including human, natural, and financial ones to strengthen and broaden the proposed project's impact in the community.

All projects funded by ANA must be complete, self-sustaining or supported with other than ANA funds at the end of the project period. ANA's funding of specific projects is not for those programs which operate indefinitely or have need for ANA funding on a recurring basis.

Goal 1: Governance. Effective governance is a necessary foundation and condition for social and economic development of Indian tribes and Native American groups. Efforts to achieve effective governance include: (1) Strengthening the effectiveness of tribal governments; (2) increasing the ability of tribes and Native Americans groups and organiations to plan, develop, and administer a comprehensive program supportive of community social and economic self-sufficiency; and (3) increasing awareness of the legal rights and benefits to which Native Americans are entitled, either by virtue of the Federal trust relationship, legislative authority, or as citizens of the United States.

Under the governance goal, ANA strongly encourages tribal councils and other governing bodies to strengthen and streamline their institutional management in order to develop and implement social and economic development strategies and to improve the day-to-day management of programs. By improving such capabilities, Indian Tribes and Native American groups can better define and

achieve the goals of their people and promote greater efficiency and effectiveness in the use of available resources.

Goal 2: Economic development is the long-term mobilization and management of economic resources to achieve a diversified economy characterized by widespread distribution of economic resources, services, and benefits; participation of community members in the productive activities and economic investments of the community; and pursuit of economic interests in ways that balance economic gain with social development.

Goal 3: Social Development is the mobilization and management of resources for the social benefit of community members, and involves the establishment of institutions, systems, and practices that contribute to the social environment desired by the community. This includes the development of, access to, and local control over the institutions that protect the health and welfare of individuals and families, and preserve the values, language, and culture of the community.

Building on the foundation of strong local governance, ANA expects tribal governments and other Native American organizations to move toward coordinated and balanced development and implementation of social and economic development strategies. These interrelated strategies should coordinate and direct all resources (Federal and non-Federal) toward locally determined priorities, and affect the community and its members in ways that promote greater economic and social self-sufficiency. In addition, these strategies should provide an independent source of revenue to the community which will assist the applicant in decreasing dependency on public funds.

C. Eligible Applicants

The following organizations which are NOT current grantees of ANA are eligible to apply for a grant award under this announcement:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated non-profit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- Incorporated non-profit Native Hawaiian organizations;
- National or regional incorporated non-profit Native American organizations with Native American community-specific objectives.

With the exception of Alaska Native grantees, current grantees of ANA, whose project period terminates in Fiscal Year 1988 (October 1, 1987–September 30, 1988), are also eligible to apply. (The Project Period is noted in Block 9 of the "Financial Assistance Award".) This program announcement does not apply to current grantees with multi-year projects when applying for continuation funding for their second or third budget periods.

Alaska Native applicants are not eligible under this program announcement because a separate program announcement for Fiscal Year 1988 funding will be published specifically for Alaska Native applicants.

D. Available Funds

Approximately $15 million of financial assistance is available under this program announcement.

Each tribe or Native American organization is eligible to receive no more than one grant award under this announcement.

E. Multi-Year Projects

Applicants may apply for projects of up to 36 months duration. A multi-year project, one extending more than 12 months, affords grantees the opportunity to undertake more complex and in-depth projects than can be completed in one year. Applicants are encouraged to develop multi-year projects. However, applicants should note that a multi-year project is a project on a single theme that requires more than 12 months to complete. It is not a series of unrelated projects presented in chronological order over a three year period. It should also be noted that funding after the first budget period of a multi-year project will be non-competitive.

The budget period for each multi-year project grant will be 12 months. The non-competitive funding for the second and third year will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, ANA's continued belief that the project is in the public interest, and compliance with applicable statutory, regulatory and grant requirements.

F. Grantee Share of Project

Grantees must provide at least 20 percent of the total approved cost of the project, which may be cash or in-kind contributions. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The method to compute the non-Federal share is shown in the Application Kit. An itemized budget detailing the applicant's non-Federal share and its source must be included in the application. A request for a waiver of the non-Federal share requirement may be submitted in accordance with § 1336.50(b)(3) of the Native American Program Regulations.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. The Application Process

Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application requirements are approved under OMB Control No. 0980–0016. The application kits containing the necessary forms may be obtained from:

Edith Clark, Administration for Native Americans, Office of Human Development Services, DHHS, Room 5300 North Building, 330 Independence Avenue, SW., Washington, DC 20201, Attention: No. 13612–881, (202) 245–7727.

Application Submission

One signed original and two copies of the grant application, including all attachments, must be hand delivered or mailed to:

Department of Health and Human Services, Office of Human Development Services, Discretionary Grants Management Branch, Hubert H. Humphrey Building, Room 345F, 200 Independence Avenue, SW., Washington, DC 20201, ATTENTION: ANA 13612–881.

The application shall be signed by an individual authorized to act for the applicant tribe or organization and to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Application Consideration

The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.

• Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel evaluates each application against the published criteria. The results of this review assist the Commissioner in making final funding decisions.

• The Commissioner's decision also takes into account the comments of the ANA staff, State and Federal agencies having performance related information, and other interested parties.

• The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this Program Announcement, and the availability of funds.

• After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within appoximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA). The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted in a timely manner under this program announcement will undergo a pre-review to determine:

• That the applicant is eligible in accordance with the Eligible Applicant Section of this announcement;

• That the application proposes project objectives which are responsive to the Program Announcement; and

• That the application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. All required materials and forms are listed in the Grant Application Checklist in the Application Kit.

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the following criteria:

(1) *Long-Range Goals.* The application presents long-range goals, within the context of the community's comprehensive social and economic development goals, which the proposed project addresses. (Inclusion of the community's entire development plan is not necessary.) (15 points)

(2) *Resources Availability to the Proposed Project.* Other resources which will assist or be coordinated with the project are described. Resources may be human, natural or financial in nature, including Federal and non-Federal resources. (15 points)

(3) *Capabilities and Qualifications.* The resumes or position descriptions of key personnel indicate that the staff is qualified to carry out the project. (15 points)

(4) *Project Objectives and Activities.* The application proposes project objectives and project activities which:

• Are realistic and feasible;

• Are measurable and quantifiable;

• Are based on a fully described and locally determined balanced social and economic development strategy;

• Clearly address a major problem within the community;

• Indicate when the objective will be accomplished; and

• Indicate who will accomplish the objective; (20 points)

(5) *Results or Benefits Expected.* The proposed project will result in specific, measurable outcomes which will clearly contribute to the overall development of the community and its members. The specific information provided is the basis upon which the outcomes can be evaluated at year end. (20 points)

(6) *Budget.* The budget fully explains and justifies the line items in the budget categories in Part III, Section B of the Budget Information. Sufficient detail is included to facilitate determination of allowability, relevance to the project, and cost benefits. (15 points)

J. Guidance to Applicants

The following policies, pointers, and instructions are provided to assist applicants in developing a competitive application.

(1) Program Guidance

• ANA reviewers of applications have indicated they are better able to judge the feasibility and practicality of a proposed economic development project when the applicant has utilized a business plan to discuss the project. ANA has included sample business plans in the application kit. It is strongly suggested that an applicant use these as a guide in the development of an application. The more information given a review panel on a proposed business, the better able it is to evaluate the potential for success.

• ANA does not fund on the basis of need. ANA funds projects presenting the strongest prospects for fulfilling a community's governance, social or economic development.

• In discussing the problems or needs of the community being addressed in the application, sufficient background and/or history of the community should be included to ensure that the feasibility of the proposed project will be understood by reviewers.

• The project proposal must clearly identify in measurable terms the expected results of the project and its positive and continuing impact on the community.

• In the Part IV, section A of the application package, *Resources Available to the Proposed Project,* the applicant should address any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant and any restrictions to those settlements and explain the specific reasons it is seeking ANA funds, particularly if the applicant apparently has other resources to support the proposed project and chooses not to use them.

• Supporting documentation or other testimonies from concerned interests other than the applicant may be used to provide support for the feasibility of the project.

(2) Technical Guidance

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• ANA suggests that the pages of the application be numbered sequentially from the first page. This allows for easy reference during the review process. Simply tabbing of the sections of the application is also helpful to the reviewers.

• Two copies of the application plus the original are required.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria and score the application prior to its submission in order to gain a better sense of their application's quality and potential competitiveness.

• There is no maximum or minimum amount of Federal funds that may be requested.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the appplication is submitted.

• ANA will not fund essentially identical projects serving the same consistency.

• ANA will accept only one application from any one applicant. If an eligible applicant sends in two applications, the one with the earliest postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from a Federally recognized tribe must be from the governing body.

• The Cover Page (included in the Kit) should be the first page of an application.

• The Approach page (Section B, Part IV) for each objective proposed should be of sufficient detail to become a daily or weekly staff guide of responsibilities should the applicant be funded.

• If a profit making venture is being proposed, revenue must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income and used in accordance with the deduction alternative. (See 45 CFR 74.42(c).)

• Applicants proposing multi-year projects must fully describe annual project objectives and activities. Separate Objective Work Plan (OWP) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects must justify the entire time-frame of the project (i.e. why the project needs multiple years to complete) and describe the results to be achieved by the end of each budget period of the project period.

• The applicant should specify the entire project period length on the cover page of the Form 424, Block 16, not the length of the first budget period. In cases where the application's contents propose one length of project period and the Form 424 cover page specifies a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the governing one.

(3) Projects or Activities that generally will not meet the purposes of this Announcement

• The following activities are inconsistent with the policies of ANA:

• Projects which support a grantee in providing training and/or technical assistance (T/TA) to other tribes or Native American organizations ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or use for its members (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.

• Proposed feasibility studies, business plans, marketing plans, or written materials such as manuals that are not an integral part of the applicant's long-range development plan. ANA is not interested in funding 'wish lists' of business possibilities. ANA expects evidence of solid Investment of time and thought on the part of the applicant to any development of business plans, etc.

• On-going social services delivery, expansion or continuation of existing social services delivery programs.

• Core administrative functions or other activities that essentially support the applicant's administrative functions.

• Project goals which are not responsive to one or more of the three ANA goals (Governance, Economic Development, Social Development).

• Projects plans or strategies clearly not determined or developed at the local level.

• Proposals from consortia of tribes that are not specific in regard to support from the roles of member tribes.

• Projects which should be supported by other Federal funding sources appropriate and available for the proposed activity;

• Activities that will not be completed, not be self-sustaining or not be supported by other than ANA funds at the end of the project period.

• Lack of demonstrated coordination with non-ANA resources.

• Lack of a justification or explanation for requesting ANA funds, or a lack of discussion of other resources and revenues for use in the project.

• The purchase of real estate (see 45 CFR 1336.50(e)) or construction (see HDS Grants Administration Manual 3–e).

• Use of ANA grant funds for a monetary share of capital investment for a business.

ANA will critically evaluate applications within which the acquisition of major capital equipment (whether oil rigs or computers/word processing equipment), franchises or management fees are major components of the Federal share of the budget. During negotiation, such expenditures may be deleted from the budget of an otherwise approved application.

• ANA will also critically evaluate projects reflecting heavy reliance on use of outside consultants, especially where consultants have prepared the application and have provided themselves a major role in the proposed project.

K. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are October 16, 1987, February 5, 1988 and May 20, 1988.

L. Receipt of Applications

Applications must either be hand delivered or mailed.

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting the deadline if they are:

(1) Received on or before the deadline date at the address specified in the Application Submission Section, or

(2) Sent on or before the deadline date. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications. Applications which do not meet the criteria in the above paragraph of this section are considered late applications. ANA shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines. ANA may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ANA does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Number 13.612 Native American Programs)

Dated: April 21, 1987.

William Lynn Engles,

Commissioner, Administration for Native Americans.

Approved: May 12, 1987.

Jean K. Elder,

Assistant Secretary for Human Development Services—Designate.

[FR Doc. 87–13123 Filed 6–8–87; 8:45 am]

BILLING CODE 4130–01–M

Federal Register

Tuesday
June 9, 1987

Part X

Department of Education

34 CFR Part 763

Drug Abuse Education and Prevention Audiovisual Materials Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 763

Drug Abuse Education and Prevention Audiovisual Materials Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue regulations governing the Drug Abuse Education and Prevention Audiovisual Materials Program. The program reflects the congressional mandate in Pub. L. 99–591 to develop audiovisual materials for distribution to local educational authorities for drug abuse education and prevention activities.

DATES: Comments must be received on or before July 24, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Louie E. Mathis, Director, Drug Education and Special Projects Unit, U.S. Department of Education, 4317 Switzer Building, 400 Maryland Avenue SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Louie E. Mathis, 202–732–4637.

SUPPLEMENTARY INFORMATION:

Background

Congress appropriated $5.5 million last fall to develop audiovisual materials for distribution to local educational authorities for drug abuse education and prevention activities.

To help carry out that mandate, the Department has created the Drug Abuse Education and Prevention Audiovisual Materials Program. This program will award funds to produce and distribute videotapes of broadcast quality for viewing by students in elementary and secondary schools. Funds awarded under this program would cover the production and distribution of both the videotapes and accompanying printed material such as teacher guides. Awards totalling $4.5 million will be made through cooperative agreements that give the Department a significant role in planning and monitoring the entire course of each project. The remaining $1 million has been reserved for additional activities related to producing and distributing audiovisual materials.

Summary of Major Provisions

(1) *The Program.* Section 763.1 explains that the purpose of the Drug Abuse Education and Prevention Audiovisual Materials Program is to support the production and distribution of audiovisual materials primarily to local educational agencies for use in drug abuse prevention and education programs.

(2) *Eligibility.* Section 763.2 provides that the Secretary may make an award under this program to a State educational agency, local educational agency, institution of higher education, or to another profit or nonprofit agency, organization, or institution.

(3) *Audiences Targeted.* Section 763.3 provides that the Secretay makes awards for projects that produce and distribute closed-captioned videotapes for use in drug abuse education and prevention programs for elementary and secondary school students.

(4) *Establishing Priorities.* Section 763.4 would permit the Secretary to establish funding priorities in one or more notices published in the **Federal Register.** (See the accompanying notice in this issue of the **Federal Register.**)

(5) *Regulations That Apply.* Section 763.5 lists the regulations that apply to this program. Section 763.5(c) proposes to apply the same cost principles to both profit and nonprofit entities. These cost principles are set forth at 34 CFR 74.174. Consistent with its authority set forth at 34 CFR 74.145, the Department will permit both profit and nonprofit recipients of funding to copyright materials produced with project funds, subject to the usual irrevocable, non-exclusive license which the Department's regulations require it to retain. Under 34 CFR 74.44, program income from copyrighted works may be retained by the recipient.

(6) *Evaluating Applications.* Section 763.20 explains how the Secretary evaluates applications. The Secretary could select applications, other than the most highly rated ones, if doing so would improve the diversity of activities or projects funded.

(7) *Selection Criteria.* Section 763.21 describes the criteria that will be used to evaluate the applications. It lists the number of points that may be allocated for each of the seven criteria. These criteria include: Creativity and effectiveness (15 points); applicant's capacity (15 points); production plan (25 points); distribution plan (12 points); management plan (12 points); quality of key personnel (15 points); and budget and cost-effectiveness (6 points).

(8) *The Message.* Section 763.30 states that each audiovisual product produced or distributed under this program must reflect the message that the use of illicit drugs is wrong and harmful.

(9) *Other Standards.* Section 763.31 sets forth other standards that must be met in carrying out an award. These include the obligation to secure the appropriate rights and releases and to ensure that the videotapes are of broadcast quality.

Paperwork Reduction Act of 1980

Section 763.21 contains an information collection requirement. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this proposed regulation to the Office of Management and Budget for its review. Organizations and individuals desiring to submit comments on the information collection requirement should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

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 in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Intergovernmental Review

The Secretary is proposing to make this program subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notice of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during

and after the comment period, in the office of the Director, Drug Education and Special Projects Unit, 4317 Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4 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, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations would 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 in 34 CFR Part 763

Education, Grants program—Education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.189)

Dated: May 26, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 763 to read as follows:

PART 763—DRUG ABUSE EDUCATION AND PREVENTION AUDIOVISUAL MATERIALS PROGRAM

Subpart A—General

Sec.

763.1 What is the Drug Abuse Education and Prevention Audiovisual Materials Program?
763.2 Who is eligible for an award under this program?
763.3 What types of projects does the Secretary assist under this program?
763.4 What priorities may the Secretary establish for this program?
763.5 What regulations apply to this program?
763.6 What definitions apply to this program?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

763.20 How does the Secretary evaluate an application?
763.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

763.30 What message must project materials convey regarding illicit drug use?
763.31 What other standards must an applicant meet?
763.32 May funds be used to purchase equipment?

Authority: Pub. L. 99–591, 100 Stat. 3341–360.

Subpart A—General

§ 763.1 What is the Drug Abuse Education and Prevention Audiovisual Materials Program?

The Drug Abuse Education and Prevention Audiovisual Materials Program supports the production and distribution of audiovisual materials primarily to local educational agencies for use in drug abuse prevention and education programs.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.2 Who is eligible for an award under this program?

The Secretary may make an award under this program to a State educational agency, local educational agency, institution of higher education, or to another profit or nonprofit agency, organization, or institution.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.3 What types of projects does the Secretary assist under this program?

(a) The Secretary makes awards for projects that produce and distribute audiovisual materials for use in drug abuse education and prevention programs for elementary and secondary school students.

(b) The audiovisual materials produced must be closed-captioned videotapes with brief teacher guides and, if appropriate, student materials for classroom use.

(c) Recipients shall produce and distribute audiovisual materials for drug abuse education and prevention programs in both public and private elementary and secondary schools.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.4 What priorities may the Secretary establish for this program?

The Secretary may establish as priorities particular grade levels, types of substance abuse, or any combination of grade levels or types of substance abuse.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.5 What regulations apply to this program?

The following regulations apply to this 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 763.

(c) The cost principles referenced in 34 CFR 74.174 apply to profit-making organizations that receive awards under this program.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.6 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Local educational agency
Private
Project
Public
Secretary
State
State educational agency

(b) *Other Definitions*—The following definitions also apply to this part:

"Drug abuse education and prevention" means prevention, early intervention, rehabilitation referral, and education related to the use and abuse of controlled, illegal, addictive, or harmful substances, including the abuse of alcohol.

"Illicit drug use" means the use of illegal drugs and the abuse of other drugs and alcohol.

"Institution of higher education," "secondary school," and "nonprofit" have the meanings provided in section 1001 of the Elementary and Secondary Education Act of 1965 in effect prior to October 1, 1981.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 763.20 How does the Secretary evaluate an application?

(a) For each competition, the Secretary evaluates an application submitted under this program on the basis of the selection criteria in § 763.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible points for each criterion are indicated in parentheses.

(d) The Secretary may select applications for funding other than those most highly rated if doing so would improve the diversity of activities or projects funded.

(e) The Secretary may, after applying the criteria in § 763.21, confirm the production and distribution capacity of highly rated applicants in order to make final determinations for awards. That confirmation may include review and inspection of an applicant's facilities.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Creativity and effectiveness.* (15 points) The Secretary reviews each application to determine how creatively and effectively the applicant's proposed project will incorporate a strong message to elementary and secondary school students that illicit drug use is wrong and harmful.

(b) *Applicant's capacity.* (15 points) The Secretary reviews each application to determine the applicant's capacity successfully to complete the production and distribution of audiovisual materials of high quality, including—

(1) The applicant's ability to acquire and organize the necessary expertise, production personnel, and, if necessary, actors and other talent—as evidenced by examples of past performance;

(2) The applicant's experience in developing educational materials for elementary and secondary schools;

(3) The applicant's experience and knowledge concerning drug abuse education and prevention;

(4) The applicant's access to equipment and facilities to produce audiovisual materials; and

(5) The quality of the applicant's work, as evidenced by a sample videotape that demonstrates professional competence in the production of audiovisual education materials.

(c) *Production plan.* (25 points) The Secretary reviews each application to determine how adequately the applicant's production plan will—

(1) Ensure the use of approaches appropriate for the age levels of the target audience;

(2) Incorporate the advice of experts in drug abuse education and prevention;

(3) Incorporate research findings likely to improve drug abuse education and prevention programs;

(4) Involve teachers, school officials, parents, and students in designing the project; and

(5) Include field-testing of materials in classroom settings and make appropriate modifications, if needed, before the materials are distributed in final form.

(d) *Distribution plan.* (12 points) The Secretary reviews each application to determine how adequately the applicant's distribution plan will—

(1) Inform appropriate school authorities of the purpose and availability of materials produced by the applicant's project, and encourage their maximum use;

(2) Effectively and economically distribute these materials for broad use by schools; and

(3) Provide for periodic review and improvement of the applicant's distribution methods.

(e) *Management plan.* (12 points) The Secretary reviews each application to determine the quality of the managment plan for the project, including—

(1) The extent to which the plan is effective and ensures proper, timely, and efficient completion of the project;

(2) The extent to which the plan's project design involves measurable timeliness for achieving significant steps in production and distribution; and

(3) The manner in which the plan will use resources and personnel successfully to complete the project.

(f) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of key personnel and applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of the audiovisual producer and other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project.

(2) To determine personnel qualifications under paragraph (f)(1) of this section, the Secretary considers experience and training in fields related to the objectives of the project.

(g) *Budget and cost-effectiveness.* (6 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project, as well as to timelines for achieving significant steps in production and distribution.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

Subpart D—What Conditions Must Be Met After an Award?

§ 763.30 What message must project materials convey regarding illicit drug use?

All materials produced or distributed with funds made available under this program must reflect the message that illicit drug use is wrong and harmful.

(Authority: Pub. L. 99–591, 100 Stat. 3341–360)

§ 763.31 What other standards must an applicant meet?

(a)(1) A recipient of funds under this part shall secure and provide to the Secretary on a timely basis prior to the broadcast or publication of materials (including field testing) produced with program funds, proof that the recipient has obtained all of the releases and rights that are necessary to ensure the authorized and noninfringing broadcast or publication of audiovisual materials funded under the program.

(2) These rights and releases must at a minimum include signed talent releases from all persons recognizably photographed, recorded or otherwise depicted, including, if necessary, releases from parents or guardians of minors who appear in or on audiovisual materials produced with program funds; worldwide music performance rights; and worldwide exhibition rights for exhibiting by the Government or others during the distribution phase of the project.

(b) Commercialization, or the implied or actual endorsement of commercial products or services through their focused portrayal, depiction, or use in audiovisual materials produced under this program, is prohibited.

(c)(1) Third parties may contribute to the production and distribution of audiovisual materials by a recipient under this part only with the prior written approval of the Secretary.

(2) Any contributions under paragraph (c)(1) of this section is subject to the regulations on cost sharing in 34 CFR Part 74, Subpart G.

(3) If audiovisual materials are produced with funds or other assistance in addition to funds provided by the Secretary under this program, an appropirate acknowledgement of that additional assistance must follow the Department's credit line and disclaimer referred to in paragraph (e) of this section.

(d) The videotapes produced under the regulations in this part must be of broadcast quality acceptable to public and commercial broadcasters in the United States. Compliance with the standards set forth in the Federal Communications Commission rules at 47

CFR 73.682, 73.687, and 73.699 constitute an acceptable standard of broadcast quality.

(e) Materials produced under this part must include a credit line and disclaimer at the end stating as follows: "These materials were produced with funds from the U.S. Department of Education. The opinions expressed herein do not necessarily reflect the views or policies of the Department."

(Authority: Pub. L. 99-591, 100 Stat. 3341-360)

§ 763.32 May funds be used to purchase equipment?

Funds awarded under this program may not be used to purchase equipment.

(Authority: Pub. L. 99-591, Stat. 3341-360)

[FR Doc. 87-13100 Filed 6-8-87; 8:45 am]
BILLING CODE 4000-01-M

federal register

Tuesday
June 9, 1987

Part XI

Office of Management and Budget

Revision to Circular No. A-125, "Prompt Payment" and Request for Comments; Notice

OFFICE OF MANAGEMENT AND BUDGET

Revision to Circular No. A-125, "Prompt Payment"

AGENCY: Office of Management and Budget.

ACTION: Revision to OMB Circular No. A-125, "Prompt Payment," and Request for Comments.

SUMMARY: This notice revises OMB Circular No. A-125, "Prompt Payment," originally published on August 19, 1982, to implement the provisions of the Prompt Payment Act, Pub. L. 97-177. The revision is being made to:

- Implement certain changes proposed by S. 328, the Prompt Payment Amendments of 1987, and H.R. 1663, the Small Business Prompt Payment Amendments of 1987;
- Clarify existing provisions of the circular; and
- Incorporate into the text of the circular, attachments and revisions published on July 10, 1984, and April 12, 1985.

The revision is intended to clarify OMB's prompt payment policy and to close loopholes in the circular that allow agencies to pay their bills late without including the required interest penalty and prevent the full implementation of the requirements of the circular and the act. The revision will strengthen OMB Circular No. A-125 and provide for equitable treatment of vendors who provide necessary goods and services to the Federal Government.

EFFECTIVE DATE: The amendments to Circular No. A-125 requiring receipt of invoice on the fifth working day following delivery of property or services and specific points for beginning and ending the acceptance period are effective for contracts issued on or after October 1, 1987. Other amendments to the circular are effective on publication.

FOR FURTHER INFORMATION CONTACT: Credit and Cash Management Branch, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, (202) 395-3066.

SUPPLEMENTARY INFORMATION: Following enactment of the Prompt Payment Act in May 1982, OMB issued Circular No. A-125. Later, two attachments were added providing additional guidance on the use of contract financing and fast payment procedures. The circular and the attachments provide that payment will be made when due, generally 30 days after receipt of property and services, or an interest penalty will be paid.

Since the initial implementation of the Prompt Payment Act in 1982, Federal agencies have made significant improvements in their bill paying performance. Reports from the agencies, the General Accounting Office (GAO), and the contracting community show that service to vendors has significantly improved and government savings have increased. However, much remains to be done if the full potential of the law is to be realized. In a 1986 report, "Prompt Payment: Agencies Have Not Fully Achieved Available Benefits," GAO indicates that agencies continue to make too many payments too late, or early, and pay only one in six late payment penalties due to vendors. These problems continue because agencies:

- Make payments after the due date without including interest;
- Intentionally make payments during the grace period;
- Fail to pay interest penalties automatically when due;
- Fail to give notice of improper invoice within the 15 day period; and
- Take discounts after the discount date.

Earlier in the year, two bills, S. 328, the Prompt Payment Amendments of 1987, and H.R. 1663, the Small Business Prompt Payment Amendments of 1987, were introduced in Congress to clarify the Prompt Payment Act and provide new guidance for improving timeliness of payment to vendors. This legislation contains a number of proposed changes to the act that this Administration strongly supports and believes should be made without delay. This notice revises OMB Circular No. A-125 to reflect portions of the proposed legislation. The changes are as follows:

- While the revised circular continues to use the terminology "receipt of invoice" to start a 30-day period of time after which a payment is due, the definition has been expanded. Specifically, if a contract does not specify a period for acceptance of property or services, the 30-day payment period would begin with the later of:
  - The date a proper invoice is received by the designated billing office; or
  - The fifth working day following delivery of the property or services.

While acceptance continues to be necessary before the Government actually pays interest penalties, under the revised circular, the Government can incur a liability for such interest independent of its action on acceptance—if a contract fails to specify a period of time for acceptance after delivery. This will govern the payment of interst on late payments, but does not require the Government to make hasty decisions about actually accepting and paying for goods or services. This requirement should encourage contracting officials to incorporate acceptance terms in contracts and force officials receiving goods to avoid paying interest penalties by making prompt decisions about the conformance of the deliveries to contract specifications.

Agencies have strongly recommended a delayed effective date for this provision because of the need to update systems, train personnel, and revise manuals. This revision to the circular will be effective for contracts awarded on or after October 1, 1987.

- The revised circular would extend payment of interest penalties to another category of payments—those made under construction contracts when the contract provides for partial payment for delivery and acceptance of completed phases, segments, or increments of the project. Unless otherwise specified in the contract, agencies would have 30 days to make the partial payment. Previously, agencies have considered construction contract progress payments "financing payments" and ineligible for interest penalties on late payments. The proposed change would consider payments during the performance of construction contracts as partial executions or deliveries and extend the promptness standard to these payments.
- Under the revised circular, the calculation of discounts would be required to begin on the later of the date on which the invoice is received by the designated billing office or the date on which the goods are delivered. This change sets the start of the discount clock at a definite point visible to both the contractor and the agency. The revision also encourages agencies to accept property and services in a timely manner by prohibiting an agency from taking discounts unless acceptance of the deliverable has taken place. This should reduce the number of discounts taken after the discount period has expired.
- The revised circular renames the "designated payment office" the "designated billing office" and defines it as the office or employee designated in the contract to first receive invoices. Under current policy, receipt is authorized by a designated payment office or finance center. This revision will reduce the existing confusion of contractors and eliminate the ambiguity about responsibility within the agency for calculating the payment period.
- The revised circular makes explicit the requirement that interest penalties are due on payments made more than 15 days after the due date on amounts

retained by the Government during contract performance and due to be released to the contractor after final acceptance. The revised circular goes beyond the requirements of the bills, which require such payments under construction contracts, and applies the principle to all types of contracts. Under the current circular, interest must be paid on late payments where complete delivery and acceptance have occurred. This should also apply to retained amounts when final acceptance has taken place.

• The revised circular clarifies the requirement that interest penalties must be paid on late payments for periodic deliveries under supply and service contracts. Currently, the circular provides for partial payment for partial executions or deliveries. The revision specifically applies the requirement to those periodic or partial deliveries made under supply and service contracts.

• The revised circular emphasizes the requirement that interest penalties must be paid automatically without a request by the firm. While this is existing policy, some agencies are ignoring it. This revision should simplify the process somewhat for both the agencies and the vendors by reducing the need for requests and responses.

• The revised circular expands agency reporting requirements significantly. The requirement to report on invoices paid after the due date without payment of an interest penalty is included as are a number of technical changes. In general, the changes to the circular conform to the reporting requirements under the November 13, 1986, OMB Memorandum 84–13, Annual Report on Payment Practices, used for 1986 agency reporting. The revised circular also clarifies that reporting of "payments" means individual invoice payments.

Additional changes to the circular clarify existing policy and increase agency accountability; the following changes are not covered by S. 328 or H.R. 1663:

• The revised circular would require contracts to include a specific period during which the agency must accept or reject the goods or services specified under the contract. The current circular is silent on this subject, as is the FAR. We believe that this change will help prevent situations in which the agency receives goods and services but the receiving official fails to accept or reject them within a prescribed period. The circular does not attempt to define the length of the acceptance period, so as to leave the agencies flexibility to negotiate reasonable periods on a case-by-case basis.

• The revised circular would emphasize that agencies are required to establish effective internal controls over the payment process in conformity with OMB Circular No. A–123, "Internal Controls".

• Agencies would be required to identify and publish an agency contact for contractor inquiries about payment practices and to issue instructions for dealing with those inquiries. This is intended to make the agencies more responsive and accountable and to assure that contractors are given every opportunity to receive payment on overdue bills for goods and services received and accepted by the Government.

• The revised circular would permit contracts to provide for one payment of multiple invoices for multiple deliveries during the same contract payment period. This is intended to reduce the number of later payments by reducing the number of payments, where appropriate.

• The revised circular would require agencies to forward copies of contracts to the agency payment office immediately upon award. This change will give the offices responsible for scheduling payment necessary information on the contract deadlines and should reduce confusion when processing contractor invoices.

• Under the revised circular, agencies would also be required to date stamp receiving reports and invoices with the date of receipt in the agency payment office. This will improve the audit trail for agency compliance with the timeliness standards.

• The revised circular would clarify that the interest penalty requirements do not apply to utility contracts (e.g., gas, water, electricity) where late payment penalties have been established by tariff or state regulatory commission.

• The revised circular would clarify that the timeliness standards are measured in calendar days unless otherwise specified. This will avoid confusion between "calendar" and "working" days.

Interested parties are invited to comment on the revision at the information contact address indicated in this publication. Comments should be received within 30 days of the date of this publication. Changes to the circular will be made if comments indicate a need to do so.

[Circular No. A–125, Revised]

TO: THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Prompt Payment

1. *Purpose.* This circular prescribes policies and procedures to be followed by executive departments and agencies in paying for property and services acquired under Federal contract.

2. *Background.* The Prompt Payment Act (Pub. L. 97–177) requires Federal agencies to pay their bills on time, to pay interest penalties when payments are made late, and to take discounts only when payments are made within the discount period. Section 2(a)(1) of the Act requires the Director of the Office of Management and Budget to issue implementing regulations. Implementation will result in timely payment, better business relationships with suppliers, improved competition for Government business, and reduced costs to the Government for goods and services. Implementation must be consistent with sound cash management practices and related Treasury regulations.

3. *Policy.* Agencies will make payments as close as possible to, but not later than, the due date, or if appropriate, the discount date. Payment will be based on receipt of proper invoices and satisfactory performance of contract terms. Agencies will take discounts only when payments are made within the discount period. When agencies take discounts after expiration of the discount period or fail to make timely payment, interest penalties will be paid. Agencies will pay interest penalties automatically, without the need for business concerns requesting them, and will absorb interest penalty payments within funds available for the administration or operation of the program for which the penalty was incurred.

4. *Definitions.* For the purposes of this circular, the following definitions apply:

a. *Acceptance*—acknowledgement by the Government that property and services received conform with the requirements of the contract.

b. *Agency*—has the same meaning as the term "agency" in section 551(1) of Title 5, U.S.C., and also includes any entity (1) that is operated exclusively as an instrumentality of such an agency for the purpose of administering one or more programs of that agency, and (2) that is so identified for this purpose by the head of such agency. The term agency includes military post and base exchanges and commissaries, but does not include the Tennessee Valley Authority, which is exempted from coverage by this circular under the provisions of the Prompt Payment Act.

c. *Agency payment office*—the office or employee responsible for scheduling invoices for payment.

d. *Applicable interest rate*—the interest rate established by the

Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). The rate established under the Contract Disputes Act is referred to as the "Renegotiation Board Interest Rate," and is published in the **Federal Register** semiannually on or about January 1 and July 1.

e. *Business concern*—any person or organization engaged in a profession, trade, or business; and not-for-profit entities (including State and local governments, but excluding Federal entities) operating as contractors.

f. *Contract*—any enforceable agreement, including rental and lease agreements, purchase orders, delivery agreements, and basic purchase agreements between an agency and a business concern for the acquisition of property or services.

g. *Day*—calendar day(s) unless otherwise indicated.

h. *Designated billing office*—the office or employee designated in the contract to first receive invoices.

i. *Due date*—the date on which Federal payment should be made. Determination of such dates is discussed in section 7 of this circular.

j. *Discount date*—the date by which, if payment is made, a specified discount can be taken.

k. *Partial payment*—payment made for partial executions or deliveries of accepted property or services.

l. *Payment date*—the date on which a check for payment is dated or a wire transfer is made.

m. *Proper invoice*—a bill or written request for payment provided by a business concern for property or services rendered. A proper invoice must meet the requirements of Section 6.b. of this Circular.

n. *Receipt of invoice*—the latter of:

—The date a proper invoice is received by the designated billing office, or

—The date on which the agency accepts the property or services or the fifth working day following delivery of the property or services if acceptance is not specified in the contract.

o. *Receiving report*—written evidence of acceptance of property or services by a Government official. Receiving reports must meet the requirements of section 6.c. of this circular.

5. *Responsibilities.* Each agency head is responsible for assuring timely payments and the payment of interest penalties where required. Each agency head will identify and publish an agency contact for contractor inquires. Each agency head will issue internal instructions, as necessary, to implement this Circular. Such instructions will include provisions for dealing with inquiries, determining the causes of any interest penalties incurred, and for taking necessary corrective or disciplinary action. Each agency head will assure that effective internal control systems are established and maintained as required by OMB Circular No. A–123, "Internal Control Systems," to reasonably assure that administrative activities required under OMB Circular No. A–125 are effectively and efficiently carried out.

Inspectors General and internal auditors will make reviews of implementation, as they had the agency head deem appropriate.

6. *Payment Standards.* Payments will be made as close as possible to, but not later than, the due date following receipt of a proper invoice and acceptance of the property or services consistent with Treasury regulations (I Treasury Financial Manual 6–8040.20). To establish adequate documentation to support payment of interest penalties, the following information must be included in contracts, invoices, and receiving reports.

a. A contract must include the following payment provisions:

—Payment due dates(s).

—Partial payment due dates for partial executions or deliveries of accepted goods or services. This includes partial payments authorized for periodic deliveries of accepted goods or services under supply and service contracts.

—For construction contracts, partial payment in lieu of progress payments for delivery and acceptance of completed phases, increments, or segments of the project.

—If applicable, a statement that the special payment provisions of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)) or the Perishable Agriculture Commodities Act of 1930 (7 U.S.C. 499a(4)) apply.

—A stated acceptance period following delivery beginning with the date of delivery and ending on a precisely determinable date on which the property or services are to be accepted or rejected.

—Name where practicable, title, phone number, and complete mailing address of officials of the Government's designated billing office and of the business concern where payments are to be sent.

Where appropriate, contracts should provide for payment of multiple invoices for multiple deliveries during the same contract performance period with one payment.

Copies of awarded contracts will be forwarded to the agency payment office immediately upon award.

b. A proper invoice must include:

—Name of business concern and invoice date.

—Contract number, or other authorization for delivery of property or services.

—Description, price, and quantity of property and services actually delivered or rendered.

—Shipping and payment terms.

—Other substantiating documentation or information as required by the contract.

—Name where practicable, title, phone number, and complete mailing address of responsible official to whom payment is to be sent.

Invoices received by the designated billing office will be stamped or otherwise annotated with the date received in that office. Notice of apparent error, defect, or impropriety in an invoice will be given to a business concern within 15 days of receipt of an invoice (3 days for meat or meat food products and 5 days for perishable agricultural commodities) and suitably documented.

c. A receiving report must include:

—Contract or other authorization number.

—Product or service description.

—Quantities received, if applicable.

—Date(s) property or services delivered and accepted.

—Signature, printed name, title, phone number, and mailing address of the receiving official.

Agencies will ensure that receipt and acceptance are executed as promptly as possible. Receiving reports will be forwarded in time to be received by the agency payment office by the fifth working day after acceptance, unless other arrangements are made. Receiving reports and invoices will be stamped or otherwise annotated with the date upon receipt in the agency payment office.

d. Checks will be mailed or transmitted on or about the same day for which the check is dated.

e. Payments may be made before receipt of property or services. These payments, or contract financing, are referred to as progress payments, advances, or prepayments.

—Criteria for Contract Financing

• Contract financing will not be provided when the contract items are the same as, or similar to, items for which progress payments are not customary commerical practice.

• Agencies shall use partial payments in lieu of contract financing to recognize

the completion of contract milestones and partial deliveries of required property and services.

• Contract financing will be offered under the following circumstances:

• When the reliability of the contractor and the adequacy of the contractor's accounting systems have been established by the contracting officer; and

• When the contractor will not be able to bill for the first delivery of products or other performance milestones after work begins for a period of four months for small business concerns and six months for others; and

• When the value of the contract or groups of contracts the contractor will perform exceeds $100,000 for small business concerns and $1,000,000 for others.

If a procuring activity determines that contract financing should be considered in a procurement of items the same as, or similar to, items for which progress payments are not customary commercial practice, the contracting officer shall certify to that effect, and such certification shall specify the reasons therefor and that the cost of such financing has been considered in making such determination.

—Consideration for Contract Financing

• Agencies will require consideration for contract financing when:

• Contract financing is added to a contract after award.

• Progress payments are authorized at intervals more frequently than monthly.

• Progress payments are authorized at rates higher than normally available under the agency's policy.

f. The receipt of a progress payment request shall be considered receipt of an invoice as defined in paragraph 4. n.

g. Contractors shall be required to remit contract debts in excess of $10,000 via electronic funds transfer in accordance with Treasury Department regulations.

h. In limited situations, payment may be made without evidence that supplies have been received. Instead, a vendor certification that supplies have been shipped may be used as basis for authorizing payment. These payment procedures may be employed only when all of the following conditions are present:

—Individual orders do not exceed $25,000 (except that heads of executive agencies may permit a higher limit on a case-by-case basis);

—Deliveries of supplies are to occur where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that make it impracticable to make timely payments based on evidence of Federal acceptance;

—Title to the supplies will vest in the Government (1) upon delivery to a post office or common carrier for mailing or shipment to destination or (2) upon receipt by the Government if the shipment is by means other than Postal Service or common carrier; and

—The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

i. Agencies shall promptly inspect and accept supplies acquired under these limited situations and shall ensure that receiving reports and payment documents are matched and steps are taken to correct discrepancies.

j. Agencies shall ensure that specific internal controls are in place to assure that supplies paid for are received.

7. *Determining Due Dates.* Payment will be made as close as possible to, but not later than, the thirtieth day after receipt of an invoice as defined in section 4.n. of this circular, except as follows:

—In those limited circumstances when a specific payment date is provided for in the contract, payment will be made as close as possible to, but not later than, that date.

—When a time discount is taken, payment will be made as close as possible to, but not later than, the discount date. Discounts shall be taken from the date on which the invoice is received by the designated billing office or the date on which property or services are delivered, whichever is later, to the discount date. Discounts will be taken whenever economically justified, but only after acceptance has occurred. (See I *Treasury Financial Manual* 6–8040.30.)

—Payment for meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in the Supplemental Appropriations Act of 1984 (P.L. 98–181), will be made as close as possible to, but not later than, the seventh day after the date of delivery.

—Payment of perishable agricultural commodities, as defined in section 1(4) of the Perishable Agriculture Commodities Act of 1930 (7 U.S.C. 499a(4)) will be made as close as possible to, but not later than the tenth day after the date of delivery, unless another date is specified in the contract.

8. *Payment of Interest Penalty.*

a. An interest penalty will be paid automatically when due without regard to whether the business concern has requested payment when all of the following conditions are met:

—There is a contract or purchase order with a business concern.

—Acceptance of property or services has occurred and there is no disagreement over quantity, quality, or other contract provisions.

—A proper invoice has been received (except where no invoice is required, e.g., some periodic lease payments) or the agency fails to give notice that the invoice is not proper within 15 days of receipt of an invoice (3 days for meat or meat food products, and 5 days for perishable agricultural commodities).

—Payment is made to the business concern more than 15 days after the due date (3 days for meat and meat food products, and 5 days for perishable agricultural commodities). This includes payment of amounts retained by the Government upon final settlement of the contract.

b. An interest penalty will also be paid automatically without regard to whether the business concern has requested payment when an agency takes a discount after the discount period has expired, and fails to correct the underpayment within 15 days of the expiration of the discount period (3 days for meat and meat food products, and 5 days for perishable agricultural commodities).

c. Interest penalties are not required when payment is delayed because of a disagreement between a Federal agency and a business concern over the amount of the payment or other issues concerning compliance with the terms of a contract; nor are they required when payments are made solely for financing purposes, payments are made in advance, or for a period when amounts are withheld temporarily in accordance with the contract. Claims concerning disputes, and any interest that may be payable with respect to the period while the dispute is being settled will be resolved in accordance with the provisions in the Contract Disputes Act of 1978 (41 U.S.C. 601 *et. seq.).*

9. *Calculation of Interest Penalties.* Whenever a proper invoice (or periodic payment where no invoice is required) is paid after the due date plus 15 days (except 3 days for meat and meat food products, and 5 days for perishable agricultural commodities), interest will be included automatically with the payment of the interest rate applicable on the payment date without regard to whether the business concern has

requested payment. Interest will be computed from the date after the due date through the payment date and the amount will be separately stated on the check or accompanying remittance advice. Adjustments will be made for errors in calculating interest, if requested. When an interest penalty that is owed is not paid, interest will accrue on the unpaid amount until paid. Interest penalties remaining unpaid for any 30-day period will be added to the principal, and interest penalties, thereafter, will accrue monthly on the total of principal and previously accrued interest.

—When an agency takes a discount after the discount period has expired, the interest payment will be calculated on the amount of the discount taken, for the period beginning the day after the end of the specified discount period through the payment date.

—When an agency fails to make notification of an improper invoice within 15 days (3 days for meat and meat food products, and 5 days for perishable agricultual commodities), the number of days allowed for payment of the corrected, proper invoice will be reduced by the number of days between the fifteenth day and the day notification was transmitted to the business concern. Calculation of interest penalties, if any, will be based on an adjusted due date reflecting the reduced number of days allowable for payment.

Interest penalties under the Prompt Payment Act will not continue to accure: (1) After the filing of a claim for such penalties under the Contract Distputes Act of 1978, or (2) for more than one year. Interest penalties of less than one dollar need not be paid.

10. *Grant Recipients.* Recipients of Federal assistance may pay interest penalties if so specified in their contracts with business concerns. However, obligations to pay such interest penalties will not be obligations of the United States. Federal funds may not be used for this purpose, nor may interest penalties be used to meet matching requirements of federally-assisted programs.

11. *Reporting.* Each Federal agency will report to the Director of OMB within 60 days after the end of each fiscal year the following infomation:

—Number and amount of invoice payments subject to the Promt Payment Act.

—Number of invoice payments that included interest penalties.

—Amont of interest penalties paid.

—Relative frequency, on a percentage basis, of interest penalty payments to the total number of invoice payments subject to the Prompt Payment Act.

—Number, total amount, and relative frequency, on a percentage basis, of invoice payments made 3 days or more before the due date, except where cash discounts were taken.

—Reasons that interest penalties were incurred.

—Number, amount, and relative frequency of invoices paid 1–7 days and 8–15 days after the due date (during the grace period).

—Number, amount, and relative frequency of invoices paid more than 15 days after the due date without including an interest penalty and the reasons for not including such interest penalty.

—An analysis of the progress made from previous years in improving the timeliness of payments.

In order to minimize the cost of reporting, statitical samplying may be used to derive the information above.

12. *Additional Provisions.* Additional procurement guidelines and requirements are set forth in applicable acquisition regulations.

13. *Effective Date.* This circular is effective on publication except for provisions in section 4.n. requiring receipt of invoice on the fifth working day following delivery of property or services and section 6(a) requiring that contracts specify beginning and ending points for acceptance. These provisions will be effective for contracts issued on or after October 1, 1987.

14. *Inquiries.* Questions or inquiries may be directed to the Credit and Cash Management Branch, Financial Management Division, Office of Management and Budget, Washington, DC 20503, telephone number 202/395–3066. Inquiries concerning the applicable interest rate may be directed to the Finance and Funding Branch, Department of the Treasury, telephone number 202/566–5651.

15. *Sunset Review Date.* This circular will have an independent policy review to ascertain its effectiveness three years from the date of issue.

James C. Miller III,

Director.

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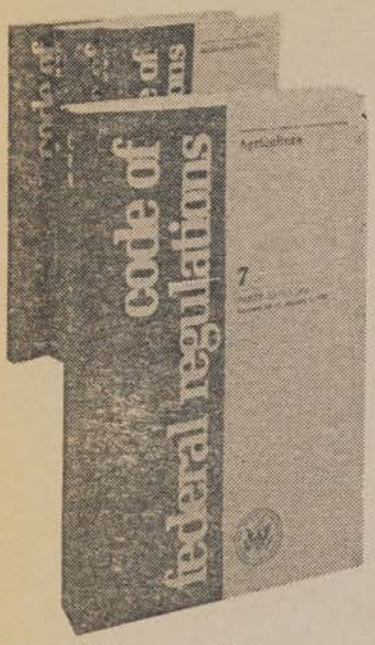
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